

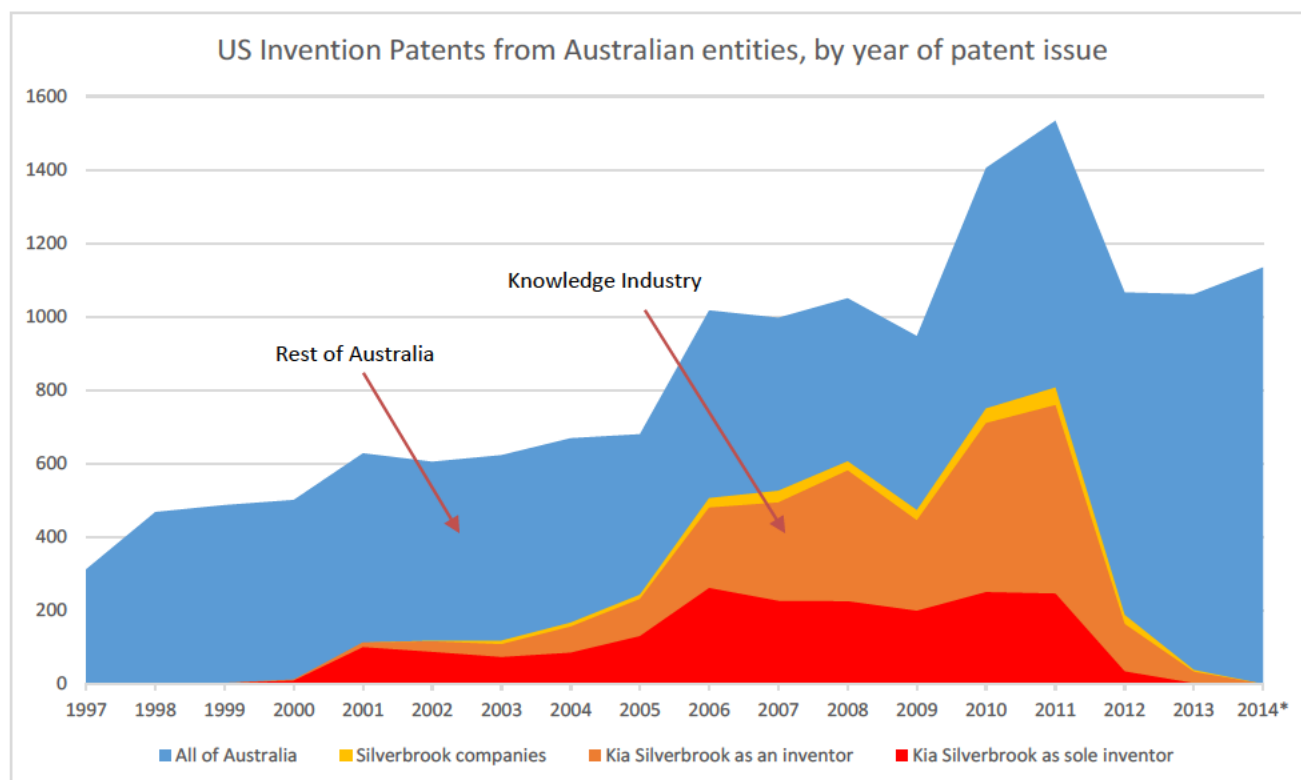
# Australia's Knowledge Industry

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There are more than 10,000 pages of documentary evidence linked to this document via its endnotes. Most of the evidence has been read in open court, and so is publicly disclosed and has absolute privilege. All of the links provided are either to stable web locations or to a Dropbox at <http://bit.ly/KnowledgeIndustry>, so there should be no link rot.

This document is not in strict chronological order. A timeline of major events<sup>1</sup> is provided.

## AUSTRALIA'S KNOWLEDGE INDUSTRY



### The Knowledge Industry: *Invention on an Industrial Scale*

Between 1994 and 2012, Kia Silverbrook established the Knowledge Industry in Australia, being defined as *Invention on an Industrial Scale* with Industrial efficiency. Previously, inventing had been a haphazard business, dominated by rare flashes of inspiration.

Silverbrook planned to grow Australia's Knowledge Industry to a world-scale, eventually employing a workforce of 10,000 or more scientists and engineers in Australia.<sup>2</sup> The Knowledge Industry started small, (with Silverbrook as the only employee) and grew to employ around 500 scientists and engineers in Australia before it was destroyed over the period from 2011 to 2014.

The Knowledge Industry concept bore fruit. Silverbrook and his staff were the inventors of slightly more than half of all Australian inventions resulting in US patents in each year from 2006 to 2011.<sup>3</sup> This is more than all patented inventions from the CSIRO, all Australian universities, all Australian companies, and all Australian independent inventors combined.<sup>4</sup> Invention Patents (known as utility patents in the US) are the means of defining and protecting inventions.

### The Knowledge Industry Companies

Silverbrook's Knowledge Industry was a long-term project to create the first world-scale<sup>5</sup> self-funding invention and research facility in Australia,<sup>6</sup> and sustain continued employment for a skilled and highly educated scientific workforce.

The first of the Knowledge Industry Companies was Silverbrook Research (SR). SR specialised in taking on difficult multidisciplinary STEM projects requiring extensive invention.

These were projects that experts often considered to be the holy grail of the market, and in some cases were thought to actually be impossible.<sup>7</sup>

Since 1994, Silverbrook Research has brought into Australia more than \$800 million<sup>8</sup> in export revenues for scientific and engineering services and patent licensing.

*"At its peak, Silverbrook Research hired around 500 scientists and engineers in a wide variety of disciplines. By 2009, SR was already bringing in about \$120 million a year in export revenue. That's not a lot on a world scale but bear in mind that we were only just beginning. The real expansion would come after the large-scale commercialisation of technologies invented at SR."*<sup>9</sup>

### 2008 US Patent Top 35

Source: IFI Patent Intelligence

1	IBM	4186	19	TI	757
2	SAMSUNG	3515	20	HONDA	747
3	CANON	2114	21	SIEMENS	724
4	MICROSOFT	2030	22	HON HAI	719
5	INTEL	1776	23	DENSO	708
6	MATSUSHITA	1745	24	CISCO	704
7	TOSHIBA	1609	25	BROADCOM	643
8	FUJITSU	1494	26	HONEYWELL	619
9	SONY	1485	27	SILVERBROOK	608
10	HP	1424	28	NOKIA	608
11	HITACHI	1313	29	SHARP	603
12	MICRON	1250	30	NEC	547
13	SEIKO EPSON	1229	31	XEROX	529
14	GE	912	32	LG PHILIPS	524
15	FUJIFILM	869	33	RENESAS	513
16	RICOH	857	34	SUN	509
17	INFINEON	814	35	PHILIPS	497
18	LG	805			

Silverbrook's patent ranking was comparable to major worldwide companies from 2006-2011



#### Some of the companies that have introduced products using Silverbrook's inventions

While the Knowledge Industry Companies were certainly world-class, they were destroyed before they could become world-scale. World-scale laboratories such as at Google, Apple, Intel, HP, Microsoft, IBM and other computing companies have 10,000 or more scientists and engineers.

In 2011, Silverbrook already had more than enough projects planned to keep large numbers of scientists and engineers gainfully employed in Australia, working on projects in a variety of technologies. He anticipated that it would take at least another decade to reach world scale.

As Mr Can Akdeniz, well known US business author, wrote:

*"Much of the work and dedication that people like Silverbrook pour into their projects might never be applauded within their lifetime. Working on global-landscape-altering concepts takes time, and while major advancements have been made and prototypes have been created, these technologies are still in their nascent stages. Some forms of creativity must be undertaken with the understanding that the ultimate benefactors will be your children, or even your grandchildren, long after your life has ended. Silverbrook knows this, and while his name will surely last in annals of creativity and inventions, he may never see some of his most exciting patents fully utilized in a global industry."*<sup>10</sup>

From 2011 to 2014, Silverbrook's Knowledge Industry came under an intensive and extensive attack by a group of companies (USGoC)<sup>11</sup> controlled by a US billionaire intent on acquiring the technologies and inventions of Silverbrook and his team. The USGoC orchestrated a scorched earth program, attacking all of Silverbrook's efforts, relevant or not, and

fooling Australian Government departments into doing their dirty work for them.

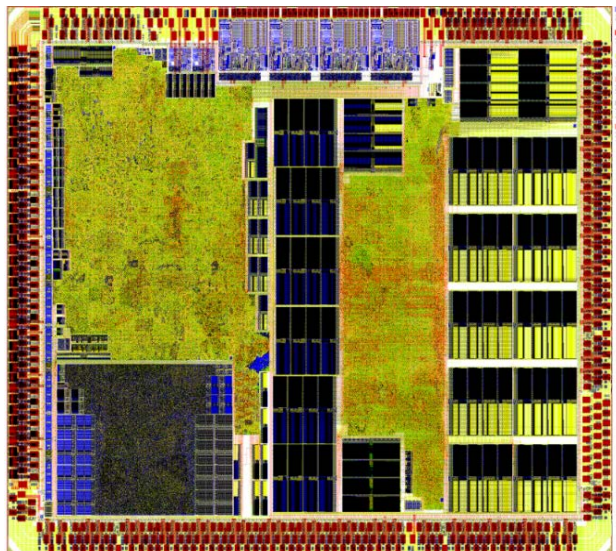
#### Knowledge Industry achievements

Some of the projects completed at the Knowledge Industry Companies include:

- the most complex computer chip ever developed in Australia (over 100 million transistors, developed in 2006);<sup>12</sup>
- the most complex MEMS<sup>13</sup> chip ever developed in Australia (6,400 MEMS devices and over 4 million transistors on a single chip);<sup>14</sup>
- the first mixed reality (MR) system for smartphones, built in 2001, before smartphones existed;<sup>15</sup>
- the most complex MEMS fabrication process ever developed, worldwide;<sup>16</sup>
- the most sophisticated colour printer technology in the world;<sup>17</sup>
- millions of lines of software;
- the most secure authentication chip known in the world;<sup>18</sup>
- a real-time digital image processing chip;<sup>19</sup>
- the most effective invisible infrared dye ever developed;<sup>20</sup>
- factory automation equipment for the most complex precision process ever developed in Australia;<sup>21</sup>
- the world's first, and still most advanced, digital pen technology;<sup>22</sup>
- the most complex plastic micro-moulding in history;
- an accurate artificial intelligence system for handwriting recognition;<sup>23</sup>



- a technology so advanced that, when it was first shown, it was widely claimed to be a hoax;<sup>24</sup> and
- an artificial intelligence system for arbitrary glyph recognition;<sup>25</sup>
- the only commercial image sensor chip ever developed in Australia.<sup>26</sup>
- The first time an Australian technology won a Gold Edison Award (in 2012).<sup>27</sup> Another technology invented by Silverbrook also won a Bronze Edison Award in 2013



**2006: The most complex chip developed in Australia, with over 100 million transistors**

Many other promising projects were left uncompleted when the Knowledge Industry Companies were destroyed.<sup>28</sup>

## WHO IS KIA SILVERBROOK?

Most people think that Thomas Edison is the most prolific inventor in history.

However, in the early 2000's, Australian inventor Kia Silverbrook passed Edison,<sup>29</sup> with at least 4,744<sup>30</sup> US patents for inventions. This is more than four times<sup>31</sup> Edison's 1,093<sup>32</sup> US patents.

From 2008 to 2017, Silverbrook was the most prolific inventor in human history. More than 3 billion people worldwide use his inventions in products produced by many major companies, including Google, Samsung, Microsoft, Apple, Lenovo, Canon, Kodak, Sony, HP, Huawei and Amazon.<sup>33</sup> His inventorship is always invisible to the consumer and public.

In a subset of those 4,744 US patents, Kia Silverbrook is sole inventor of over 1,934 patented inventions. Unlike in Edison's time, it is now necessary to credit all of the actual inventors of an invention covered by a patent. Otherwise, that patent can be declared invalid. The days of a boss claiming credit for employee's inventions is long gone.

In 2010 Silverbrook was forced to stop inventing to focus on extensive legal and business attacks, which are still ongoing. Seven years later Shunpei Yamazaki passed Silverbrook's status as the world's most prolific inventor,<sup>34</sup> and in 2017 Silverbrook slipped into second place.

Silverbrook's focus as an inventor was not on individual products, but on platform technologies: advanced new technologies which could be used in the development of a wide range of new products.<sup>35</sup>

Mr Can Akdeniz wrote:

*"Edison's torch has had to be passed to a new inventor of the Modern Age. Some individuals stand out as being the inventors of revolutionary products and processes in modern times, but traditionally, the man who holds the most patents wins. Since 2008, that man has been Kia Silverbrook, who currently holds the title of the most prolific inventor in history, with more than 4,600 US patents and over 9,800 international patents.*

*"He is an Australian born scientist, inventor, and entrepreneur. Although he doesn't have the star status of many of today's most innovative start-up CEOs or social media moguls, he has become a thriving symbol of modern creativity. His track record is somewhat reminiscent of Edison's, showing a diversity of interests and a wide range of intellect. The companies he has founded and the inventions he has patented run the gamut from LCD displays and interactive paper to nanotechnology and genetic analysis. His perennial dedication to finding new and exciting ways to reinvent the world around us to make him the poster-boy of perseverance, when it comes to creativity."*<sup>36</sup>

## Early life

Kia Silverbrook was born in the late 1950s in South Australia, to an English teacher mother and a carpenter father. He is not from a wealthy family.<sup>37</sup> There was no TV, phone, record player, or any other electronic devices in his home.<sup>38</sup> His first job was shovelling horse manure for a plant nursery. He has always lived modestly - he has never owned a car which cost more than \$2,100, and from 2015 to 2017 spent a total of \$40 on clothes and shoes.<sup>39</sup> Although Silverbrook had the final say on all salaries at the Knowledge Industry Companies, the salary that he paid himself was far from the highest.<sup>40</sup> Personal wealth has no attraction to him.



**1979: Fairlight CMI**

Perhaps influenced by the total absence of electronics in his life, he started inventing in electronics when he was 14. When

he was 16, he dropped out of University to pursue his passion for inventing. Over the years, he developed a highly effective process for inventing on demand<sup>41</sup> and could apply this process to complex technologies of high value and usefulness.

Like many Australians, Kia Silverbrook grew up with an imperative ethic: if you can do something to help, then you must. His capability to invent on demand came with moral obligations. The inventions must have a benefit for humanity, or, at the very least, do no harm.<sup>42</sup> The inventor's role is to open new possibilities for societal advancement, and Silverbrook took his responsibilities as an enabler seriously.

From 1977 to 1985, he was employed by Fairlight Instruments, the famed Australian company that developed the Fairlight CMI.<sup>43</sup> The CMI<sup>44</sup> was the world's first digital 'sampler' musical instrument, which revolutionised music in the 1980s. The CMI is the direct ancestor of Apple's GarageBand and all other sampling music synthesisers.

While at Fairlight, he invented and developed the Fairlight CVI, a seminal digital-video-effects and digital-painting system,<sup>45</sup> that has influenced many modern video systems.

In 1985, he founded Integrated Arts Limited (IAL) to develop professional video production and computer animation equipment<sup>46</sup> using parallel processors.<sup>47</sup> He took IAL public in 1987, just two weeks before Black Tuesday,<sup>48</sup> the October 1987 stock market crash. The crash shattered his plan to raise capital in a secondary public offering. IAL continued until early 1990, when the controlling investors sold the Australian developed IAL technology to Rank Cintel in the UK, and Canon of Japan, in exchange for a royalty stream. Silverbrook arranged jobs for all staff who wanted to continue the project in the UK or move to Canon to work on Silverbrook's inventions there.



**1993: World's first 'retina' super-high-resolution display Silverbrook invented for Canon, displaying 'photoshop + illustrator' software developed by CiSRA team**

In 1990, he became the founding executive director of CiSRA,<sup>49</sup> the Australian research subsidiary of Canon. Canon is well known worldwide for its cameras, printers, and photocopiers, but is also active in a wide range of computer and optical products. CiSRA still employs around 130 scientists and engineers in Sydney. Silverbrook managed CiSRA from 1990 to

1994, and during that time invented a variety of products and technologies for Canon.<sup>50</sup>

In 1994, Silverbrook resigned from Canon to become an independent inventor, and formed Silverbrook Research (SR). He spent a year researching and writing 54 patent applications.<sup>51</sup> In 1996, he sold those patent applications to Kodak for \$6.6 million.<sup>52</sup> This project became the core of the Kodak Stream and Kodak UltraStream technologies, the main technologies underpinning Kodak's future.



**1996: Kodak Stream printing technology**

Silverbrook used the funds from the Kodak sale to commence other research, and Silverbrook Research grew from there.

Steadily, the concept of a Knowledge Industry formed: the idea of transforming invention from the once-in-a-while flash of inspiration that it has always been, into a process of industrial scale and efficiency. He hoped that the process could be replicated worldwide to accelerate solutions to humanity's problems.

### Training the top 23 Australian inventors

There is a list of prolific inventors on Wikipedia.<sup>53</sup> This lists the 144 inventors throughout history with more than 200 patent families. Australia is over-represented, with 9 entries in the list. Australia is ahead of Germany, China, India, and the UK, which have 7, 5, 5, and 1 entries respectively. Only the USA and Japan are ahead of Australia.

All nine Australian inventors worked for Silverbrook Research, and none were prolific inventors before working there. Without Kia Silverbrook, there would be no Australians on the List of prolific inventors.

But it goes further than that. The cut-off minimum of 200 patent families to be included in the Wikipedia list is arbitrary. If one looks deeper than this list, one finds that all of the top 23 Australian inventors were trained by Kia Silverbrook.<sup>54</sup>



Kia Silverbrook was training inventors at the Knowledge Industry Companies to eventually be able to invent and initiate projects in Australia that were sufficiently commercial to attract external funding in their own right.<sup>55</sup> However, this is a higher bar than most people realise. It is not easy to initiate a project where the international community is willing to pay hundreds of millions of dollars to Australians to develop a technology invented in Australia.

As explained below, the Knowledge Industry Companies were destroyed before any such employee projects reached the stage of being able to attract external investment. All externally funded projects were invented by Kia Silverbrook himself.



### Chief salesperson

Silverbrook was not only the primary inventor in the Knowledge Industry Companies; all of the revenues of the companies derived directly from inventions and projects that he initiated.

Silverbrook Research had no sales team. Over its entire existence, Kia Silverbrook secured all<sup>56</sup> of the more than \$800 million<sup>57</sup> of export revenues that SR earned through patent licensing and scientific and engineering services. This income resulted from deals that Silverbrook had both initiated and concluded, with customers that he had arranged, usually with little or no involvement from other staff at Silverbrook Research.

## SILVERBROOK RESEARCH: THE CORNERSTONE

Big business has a stereotypical set of behaviours. Successful businesses are assumed to be self-promoting, to be ruthless, to be focussed on the short term, and to be venal with respect to shareholders and upper management, but exploitative of their workers. These stereotypes are generally accurate. The 1000:1 pay difference between the lowest and highest paid workers in many large companies is a clear example of this. Observations show that most business behaviour cleaves quite closely to these stereotypes.

Businesses are not expected to be altruistic, to be socially and globally minded, to have outlooks spanning generations, or to be deferentially respectful to its workers. However, Silverbrook Research was all of these things.

An unusual aspect of Silverbrook Research was the dizzying range of technologies that Kia Silverbrook ensured that SR had

### SR expertise

- digital computer chip design
- semiconductor fabrication
- microelectromechanical systems
- microfluidics
- image sensors
- image processing
- authentication systems
- computer architecture
- mixed signal chip design
- full-custom chip design
- factory automation
- digital printing
- electronics design
- artificial intelligence
- multi-physics simulation
- precision optics
- molecular electronics
- internet software
- embedded software
- operating system software
- applications software
- microcode
- scientific computing
- organic chemistry
- chemical synthesis
- industrial chemistry
- biochemistry
- DNA analysis
- plasma science
- cryptography
- power engineering
- aerospace systems
- colour theory
- photovoltaics
- magnetics
- solar photovoltaics
- digital signal processing
- computer graphics
- digital video
- flat panel display technology
- quantum mechanics
- graphene chemistry
- nuclear magnetic resonance
- microscopy and analysis
- materials science
- volume production technologies
- mechanics
- plastic moulding
- industrial design
- 3-D printing
- mathematical analysis

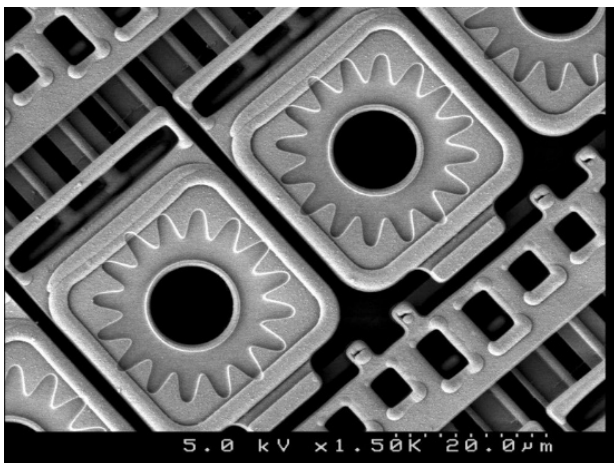
expertise in (see sidebar).<sup>58</sup> It was his goal that SR would eventually be able to tackle significant projects in any technological area. To this end, SR reinvested surplus revenues in new projects, technologies and people. SR had the broadest technology remit of any research facility in Australia.<sup>59</sup>

Kia Silverbrook's ability as an inventor is predicated on his understanding of the underlying science and technology. He did not introduce any new capability into Silverbrook Research unless he personally had a sufficient understanding of the technology be able to invent in that technology field.<sup>60</sup> As a result, Kia Silverbrook has made inventions in most of the technology fields listed in the sidebar.<sup>61</sup>

By 2009, SR brought in around \$120 million a year in export revenues for scientific research, technology development and patent licensing. This was entirely different from mining, agriculture, or even services, where someone else will use the land or provide the service if one group doesn't.<sup>62</sup> Without Silverbrook's efforts, these export earnings would not have come to Australia, along with around a quarter of a billion dollars in tax revenue that Australia would not have received.

By 2011, Silverbrook Research had split into five companies as a defence from the hostile takeover by the USGoC. The spin-off companies were Mpowa, Geneasys, Superlattice Solar and Priority Matters. Together with Silverbrook Research, these were the Knowledge Industry Companies, and together they transformed the process of invention into an industry.

### The Memjet Technology



**2003: Memjet nozzles. This entire scene would fit on the cross-section of a human hair**

The largest project that Silverbrook Research undertook was the Memjet<sup>63</sup> technology, invented by Kia Silverbrook from 1996 on. This is an advanced new printing technology, using a new type of inkjet printhead with 70,400 nozzles,<sup>64</sup> each with on-chip circuitry totalling 44 million transistors. It calculates and prints up to 774 million ink drops a second, each drop only a trillionth of a litre. It is capable of sustained printing of a full-colour photo quality page every second, for true 60 ppm printing.<sup>65</sup> Multiple printheads can be combined to print much wider, faster, or both. A vast array of ancillary technologies also had to be developed, including new microelectromechanical fabrication processes, advanced printer controller chips with over 100 million transistors, complex mechanical systems, precision inks, precision manufacturing and testing systems, and large amounts of software and firmware.

By 2007, Silverbrook Research had prototypes of desktop printers, wide format printers, photo printers, and colour printers small enough to fit inside a cell-phone.<sup>66</sup>



**2007: 60 ppm photo quality desktop colour printer**

In March 2007, Lyra, the print industry's leading independent analysts, released a 117-page report<sup>67</sup> on Memjet called Silverbrook's Memjet and the Impending Print Industry Shake-Up. Lyra stated:

*"We were skeptical that our initial reaction to Memjet was overblown, but the deeper we dug into Silverbrook Research and the more we learned about Memjet, the more we realized that there was plenty of steak to go with the sizzle. And as additional Lyra analysts, an inherently skeptical bunch, saw demonstrations and talked to Silverbrook Research and the Memjet companies, the more we came away concurring that Memjet will be big, really big."*<sup>68</sup>

Lyra also provided the first external assessment of Memjet's value:

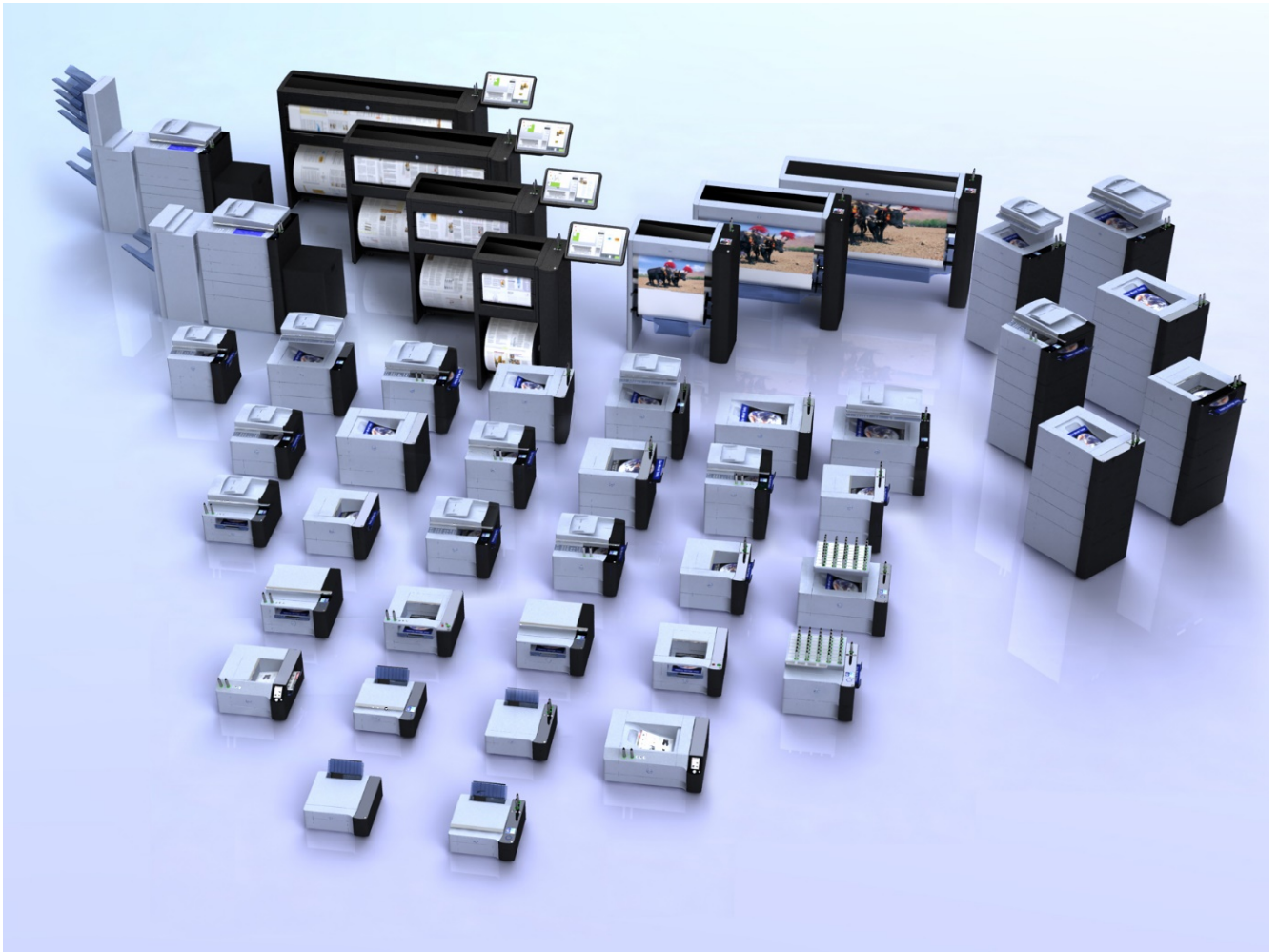
*"Conceivably, HP or one of the other major incumbents could attempt to buy Silverbrook Research and/or the Memjet companies outright, but we suspect at this point the capital required to do so would be in the ten-digit range, that is, billions of dollars. Considering that Memjet products have yet to ship, the potential value created by the mere threat of this new entrant is mindboggling."*<sup>69</sup>

### Silverbrook Research licenses its Memjet technology

In 2002, an international group of companies, the Memjet Group,<sup>70</sup> was licensed to commercialise the Memjet technology. Silverbrook Research retained ownership of the large patent portfolio relating to the Memjet technology.

There were different operating companies to address the vastly different markets, as the market for \$50 home inkjet printers has little in common with the market for \$5 million high-speed commercial colour presses, or other printer markets.

The Memjet Group had highly experienced leaders in each commercialisation company, drawn directly from major print technology companies.<sup>71</sup> For example, the chairman of Memjet Home and Office (MHO) was Carolyn Ticknor, formerly head of HP's entire \$20 billion a year print and imaging group.<sup>72</sup> The CEO of MHO was Bill McGlynn, formerly head of a



**2008: A range of printers using modular Memjet technology, designed for a major Asian customer. Even the smallest printers can print 60 full-colour photographic quality pages every minute.**

\$4 billion a year HP printer division. The HP background was particularly relevant, as HP laser printers use Canon technology in a similar way that the Memjet Group was arranging printer companies to use its technology. Both Ticknor and McGlynn had extensive experience with the cooperative relationship between Canon and HP.

In April 2009, the USGoC<sup>73</sup> gained control of the Memjet licensees. They had invested heavily in the Memjet Group, as they expected the commercialisation revenues of the Memjet Group to exceed \$30 billion within 10 years.

They were not alone in this expectation. For example, investment bank MDB Capital projected annual revenues for Memjet to exceed \$30 billion by the Memjet Group's ninth year of commercial sales,<sup>74</sup> giving a conservative net present value (NPV) of around \$5 billion.<sup>75</sup>

On multiple occasions from 2007 to 2012, the Memjet technologies and market opportunities were independently valued at billions of dollars.<sup>76</sup>

For a technology widely acknowledged as the best in the industry,<sup>77</sup> this was a realistic assessment. If, as Silverbrook intended, Memjet had been commercialised as a disruptive technology<sup>78</sup> by multiple strong brands wishing to enter the \$300 billion printer market, such value creation was inherently achievable. HP now licenses the Memjet patents.

## THE OTHER FOUR KNOWLEDGE INDUSTRY COMPANIES

Silverbrook's term Knowledge Industry had not yet taken root. The Knowledge Industry Companies were informally known as the "Silverbrook Group", although they were not a group by structure or intent.

Author Can Akdeniz wrote:

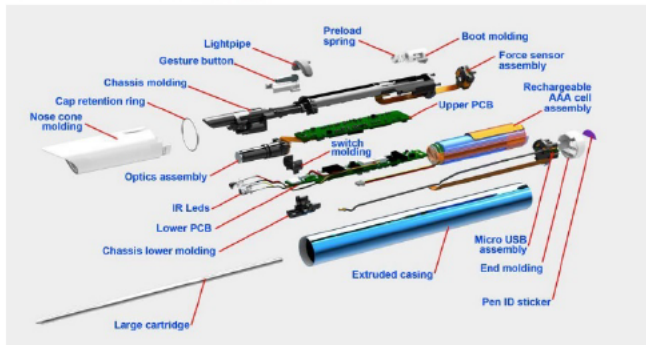
*"According to Silverbrook, the next six disruptive innovations that will change the course of human history will be in the fields of Artificial Intelligence, Biotechnology, Solar Photovoltaics, 3-D Printing, Robotics, and Self Driving Cars. It seems like Silverbrook has his finger on the pulse of innovation, and with more than 10,000 total patents under his belt, his predictions should be taken into serious consideration."*<sup>79</sup>

Silverbrook has been involved in five of these six technology areas.



## Mpowa and the Netpage technology

In 1999, Kia Silverbrook started Netpage,<sup>80</sup> a project within Silverbrook Research to build the technology to transform all



forms of printing and handwriting into interactive documents and to make paper a full member of the internet age. After more than a decade, this complex technology was operational and ready for commercialisation.

The technology allowed every page to be interactive like a webpage, with all hyperlinks automatically preserved and operational from the printed page. Web links, audio, video, animation, forms, and other printed hyperlinks play when clicked by either a digital pen or a smartphone. Every page could be digitally stored on servers as it was printed so that it was archived even if lost or destroyed. Every page could be cryptographically secured and unforgeable.

The Netpage Pen<sup>81</sup> is a digital pen which turns paper interactive – every pen mark on the paper is recorded, along with position, time, velocity, pen angle,<sup>82</sup> and pen pressure information of high accuracy. Printed documents can be marked up by pen, with the markup automatically being reflected back in the original electronic document. Documents can be signed with extremely high security using a novel integration of human signatures and sophisticated cryptography.

Silverbrook Research built the first Mixed Reality<sup>83</sup> document viewer in 2001, well before the iPhone debuted in 2007. After further development, this became the Netpage Viewer<sup>84</sup> and became a free app for iPhone and Android smartphones. As with the Netpage pen, the viewer gives every printed page the interactivity of a web page, with video, audio, links, and other features. Although it appears simple to the user, there is a large amount of sophisticated software residing on web servers that form the bulk of the system.

The Netpage project was moved to a new company, Mpowa,<sup>85</sup> and did not immediately get embroiled in the USGoC's hostile takeover of Silverbrook Research. The Netpage technology had been adopted by customers in the US and Australia.

From around July 2013 to June 2014, the Netpage technology was applied to every page of all magazines published by Australian publisher Pacific Magazines (for example New Idea, Famous, Marie Claire, and Better Homes and Gardens) and other magazines, such as from Hearst in the US.

With an expansion beyond its pilot program with Pacific Magazines,<sup>86</sup> Mpowa could readily have become profitable.

The relatively modest capital required for expansion was to come from the repayment of a US\$36 million loan Silverbrook made to the Memjet Group. This loan had become due and payable on 31 December 2012.<sup>87</sup>

However, this loan was never repaid, despite Silverbrook's extensive legal efforts to recover it.<sup>88</sup> The scorched earth strategy meant that many sources of funds<sup>89</sup> for the commercialisation of the Netpage technology were blocked.

## The tragedy of Geneasys

As described later, the Fair Work Ombudsman (FWO), an Australian Government department, was fooled by the USGoC into starting lawsuits against each of the Knowledge Industry Companies. Judge Alexander Street of the Federal Circuit Court of Australia (FCCA) hear the five cases, and wrote of Geneasys:

*"That conduct by the FWO was a cause of a company [Geneasys] that was otherwise solvent being placed in liquidation and the intellectual property that was of real and substantial commercial value was thereby destroyed."*<sup>90</sup>

Judge Street's comment doesn't even begin to touch on the scale of the tragedy. Judge Street's judgment was necessarily limited to the financial and human cost already imposed. It was not part of his remit to comment on the enormous human tragedy resulting from the FWO's actions.

Geneasys<sup>91</sup> [Genetic Analysis Systems] was Silverbrook's non-profit project to invent and develop technology to transform medical diagnostics around the world.<sup>92</sup>

The technology Geneasys was developing was "Keylab", a miniature fully automated diagnostic medical laboratory the size of a USB flash drive.<sup>93</sup> The Geneasys KeyLab was designed to detect a very broad range of bacterial, viral, fungal infections and hereditary disorders through the detection of a genetic "fingerprint" of the disease.<sup>94</sup> The Keylab detected 48 different diseases simultaneously in around 10 minutes, using nothing but an ordinary smartphone and a disposable Keylab module.<sup>95</sup>

Geneasys was developing a platform technology, not just a



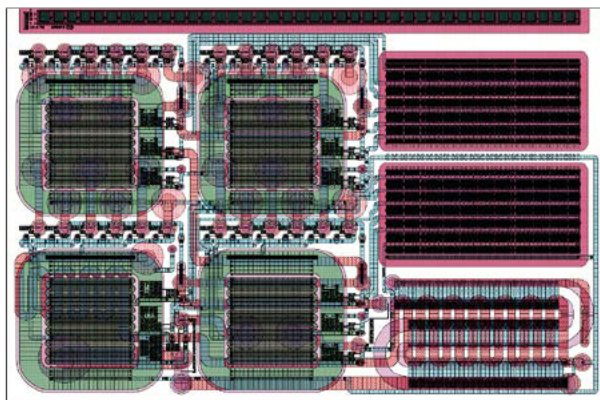
2012: Keylab module plugged into an iPhone via a USB cable

single product. The Keylab could be programmed (by inkjet printing of oligonucleotide probes) to simultaneously detect any set of 48 infectious or hereditary diseases. Geneasys had plans to expand the detection capability of a Keylab to include metabolic diseases, a wide range of cancers, and other maladies. The technology also had applications in veterinary medicine and horticulture.

The Keylab had to be cheap enough to use every time you visit a doctor's surgery. It also had to be cheap enough so that Silverbrook could give away very large quantities of Keylabs, eventually billions each year, to developing countries.<sup>96</sup> A highly accurate diagnosis based on genetic signatures could save many lives, especially in locations where modern medical diagnosis is essentially non-existent. If as few as 1% of Keylabs resulted in a life saved, the free distribution of billions of Keylabs to developing countries would save tens of millions of lives. The actual number is likely to be much higher than 1%.

All epidemiological data was to be stored 'in the cloud', using the capabilities of the smartphone that the Keylab was plugged into. This would have made it the largest repository of epidemiological data in history, potentially leading to significant advances in epidemic control and disease prevention.

Although Geneasys was a non-profit, Silverbrook planned to fund the large-scale distribution of free Keylabs from revenues on the sale of Keylabs in developed countries.<sup>97</sup> As this would undercut the profitability of US based medical diagnostic companies, Silverbrook anticipated that patent litigation would be used in an attempt to stop Geneasys.<sup>98</sup> To protect Geneasys, Silverbrook ensured that Geneasys had 355 pending US patents,<sup>99</sup> one of the strongest patent portfolios in the field.<sup>100</sup>



**2012: Layout of a Geneasys Lab-on-a Chip (LOC)**

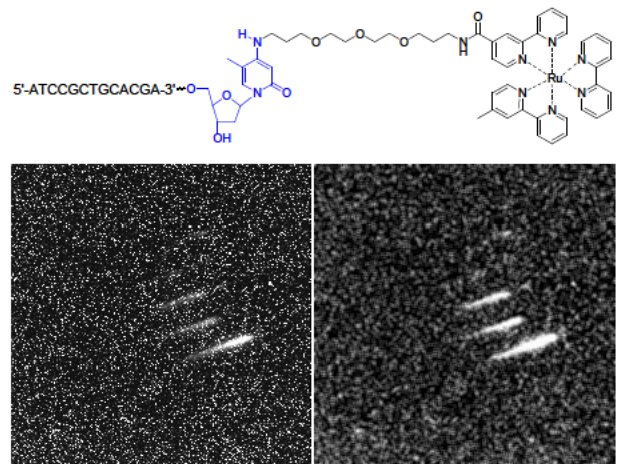
Judge Street understood the humanitarian goals of Geneasys and wrote:

*"...the intention was in part to assist developing countries; leveraging a buy one, donate one strategy and that no return was obtained by shareholders."*<sup>101</sup>

The research program was in its sixth year, and all significant scientific problems had been solved. The scientific proof-of-concept was achieved in October 2013. After more than 5 years and \$4 million of research funds, the key proof-of-concept was achieved. The question:

*"Could we achieve enough light from an electrochemiluminescent (ECL) probe to be reliably detected by an image sensor that we designed, and fabricated using a semiconductor process that we specified?"*

was answered in the affirmative, with definitive results well above the threshold of detection.



### October 2013: Geneasys proof of concept

Unfortunately, this proof of concept was achieved just a few months before Geneasys was forced into liquidation by an extortion attempt<sup>102</sup> that had the encouragement of the FWO. Judge Street wrote:

*"Indeed I find the employees' best interests were not advanced by conduct of the FWO which I find was a real cause of two employees causing the winding up of Geneasys so that they could recover Fair Entitlements Guarantee payments. That conduct was pursued by those employees I find with the encouragement of the FWO."*<sup>103</sup>

Geneasys was liquidated on 4 February 2014, and with it, \$4 million in scientific research and 355 US patents. The potential to save millions of lives every year was lost.

### Superlattice Solar

Superlattice Solar<sup>104</sup> was formed as the first stage of implementing Kia Silverbrook's broad sweep of new inventions in the area of solar cells.<sup>105</sup> The cost of manufacture and installation of solar cells, and their longevity and efficiency are the keys to their economic viability, and their ability to change the world from fossil fuels to clean solar energy.

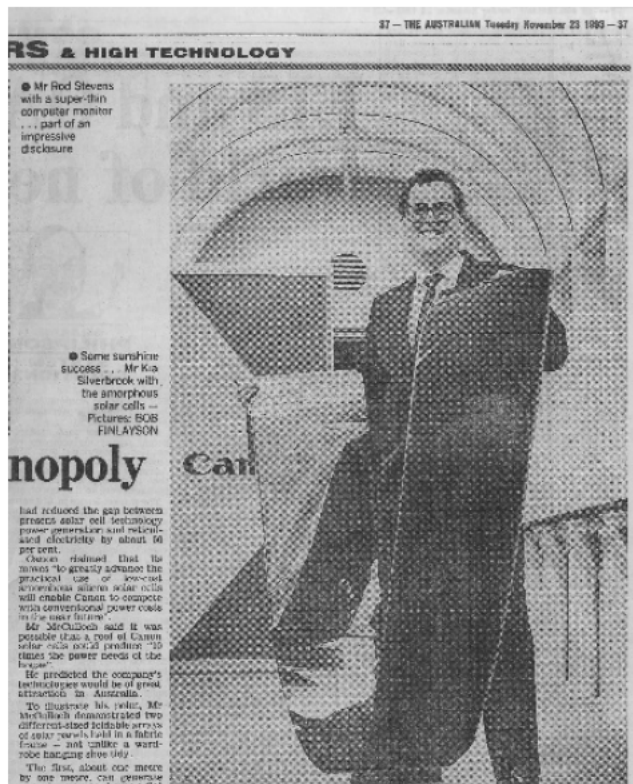
Over the years, Silverbrook has accrued a significant number of inventions in the field of solar power but has not yet had time to reduce any of these to practice. These inventions covered: thin film solar cell principles, solar cell manufacturing methods, industrial-scale factory principles and designs, very low cost automated 'roll-out' installation techniques for electricity utilities, low-cost solar tracking, automated maintenance systems, inverters, high voltage supply systems, and electricity distribution systems.

In the combination of these varied inventions, Silverbrook had invented a radical new solar power system that targeted a total cost per watt of \$0.25 per watt,<sup>106</sup> including installation and Balance of System (BOS<sup>107</sup>) in GigaWatt<sup>108</sup> installations. This is well below the annual cost of coal for coal-fired power stations.

This was an ambitious target, but one that, if achieved, has the potential to transform energy production by making it cheaper to install new solar cells than to keep existing fossil fuel power plants running.



While geopolitics prevents Australia from taking a major role in solar cell manufacture, there is no such constraint on the source for the sophisticated factory equipment used to manufacture the solar cells, a potentially multi-billion-dollar business. Silverbrook intended that the specialised equipment required to make the solar cells be made in Australia and exported to the world.



1991-2013: Silverbrook had been working on thin film solar cells since he was at Canon

## Priority Matters

Silverbrook's Knowledge Industry vision was based on Invention on an Industrial Scale. Inventing means coming up with something new, that has never been done before, is not obvious, and is useful.

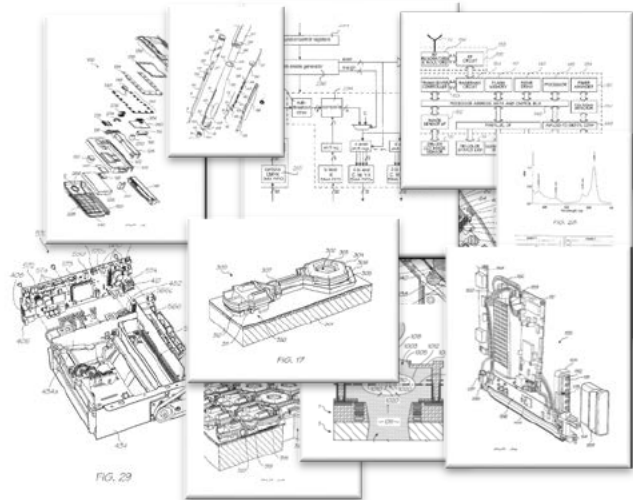
To enable commercialisation of inventions, it is often necessary to patent them. Patents are the means of both defining and protecting an invention, so the Knowledge Industry vision also required patents on an industrial scale. However, patenting currently operates as a highly inefficient guild.

From inception in 1994, Silverbrook Research did much of its patent work in-house to save costs. A team of five patent attorneys and around fifteen patent administrators and patent drawers looked after the large patent inventory, using efficient processes Silverbrook established. Silverbrook transferred this team into a separate company, Priority Matters,<sup>109</sup> as the Knowledge Industry grew and commercialisation companies were spun out.

Priority Matters was a company that employed a team of such extraordinary productivity that its like has never been seen before in Australia, and undoubtedly will never be seen again.

The team at Priority Matters, continuing the work they started at Silverbrook Research, was responsible for fully half of all of the US patents granted to Australian entities of any kind for

each year in the period 2006 to 2011. This is truly extraordinary, as there are more than 120 patent attorney firms in Australia employing over 1000 patent attorneys. The small team of twenty at Priority Matters wrote and prosecuted<sup>110</sup> more patents than all other Australian patent attorneys combined. This meant that Priority Matters had an efficiency more than 40 times better than the Australian average. This was an essential part of the Knowledge Industry, without which the industry would become bogged down in the high costs and inefficiency of the patent process.



## Humanitarian projects

Part of Silverbrook's long-term plan was to fund ten humanitarian projects,<sup>111</sup> each to the tune of \$100 million, once his shareholding in the Memjet companies reached \$1 billion.<sup>112</sup> Unfortunately, his shareholding in Memjet only reached US\$537 million at its peak in 2011, before the Knowledge Industry was destroyed.<sup>113</sup>

While Silverbrook had envisioned ten humanitarian projects to be funded to \$100 million each, by 2011 he had only decided on four of these projects, leaving the other six to be determined after the \$1 billion level was reached, allowing for changes in priorities as ideas developed.

These four projects already decided were:

1. **Fred Hollows Foundation:** the Fred Hollows Foundation has a proven ability to save someone's eyesight for \$25 per patient. \$100 million would be enough to save the eyesight of four million people, and eliminate the need for a further four million carers. Silverbrook chose the Fred Hollows Foundation as a backup project – to ensure that, even if the technology projects failed, substantial good would be done.<sup>114</sup>
2. **Advanced medical diagnostics:** The development of a technology to transform medical diagnosis around the world, and specifically in developing countries, has the potential to save many millions of lives. Silverbrook started this project well before reaching the \$1 billion threshold, due to the long development time of complex technologies. Silverbrook considered that \$100 million would be sufficient to get the project to the point that it would be self-sustaining, and had already invested more than \$4 million of his own funds into it. Silverbrook formed the company Geneasys to take the technology to its conclusion.<sup>115</sup>
3. **Solar Power:** Silverbrook has been inventing in the field of solar power for more than 25 years. Over the years, he funded development at his company Molecular Electronics Research



to develop his inventions. In 2008, he made a new series of inventions that could drive the cost of making and installing new arrays of solar cells below one-year's fuel cost for an equivalent fossil fuel power plant, and thus rapidly drive such power plants into extinction. He started Superlattice Solar<sup>116</sup> as the first stage of this project and considered \$100 million sufficient to reach the stage where the project could attract external investment.

4. **Space Elevators:** Elevators from Earth to geostationary orbit (GEO - 35,786 km straight up from the equator) would transform human destiny by making space travel no more expensive than intercontinental airline flights.<sup>117</sup> The big technical problem facing space elevators is the specific strength of the elevator cable. Currently, there is no material strong enough to make a cable that supports its own weight from GEO to Earth (without an excessive taper), though there are several candidates. Silverbrook has been thinking about this problem for more than 20 years and now believes that a proof-of-concept prototype can be achieved within a \$100 million budget. Once proof-of-concept has been achieved, the multi-billion-dollar investment required to create a space elevator infrastructure becomes economically feasible.

*"I had planned to move staff over to this project, and over to Geneasys, as development on the Memjet technology wound down. Geneasys and the space elevator are similar in many ways to Memjet. All three are billion-dollar projects, though with very different technology risks. All three had extreme reliability requirements, though in entirely different ways. While a print technology, a medical technology, and a transport technology may seem to be wildly different, there is much more science and technology overlap than you might think."*<sup>118</sup>

## THE USGoC<sup>119</sup>

A US Group of Companies (USGoC) became intent on gaining full control and ownership of the Memjet technology.

After gaining control, the USGoC installed a new CEO over the entire Memjet Group.<sup>120</sup> This CEO took over responsibility for customer relationships on 5 January 2010<sup>121</sup> and was to implement the marketing and sales of the licensed technology. Unfortunately, the new CEO had no experience as a CEO of a company of any size, no marketing background, and no experience in the printer industry.<sup>122</sup> He had what Americans call a "Type A" personality, the pros and cons of which have been made famous by President Trump.

In December 2010, the Memjet CEO stated that the Memjet Group would require around US\$214 million to reach break-even. The Memjet board, including Silverbrook, committed to raising these funds. At a board meeting on 15 June 2011, the Memjet CEO announced that the Memjet Group would need a further US\$213 million cash injection, on top of what he said they needed just six months earlier.<sup>123</sup> With the help of forensic accountants KordaMentha, Silverbrook found hidden in the Memjet Group's financial projections a further US\$174 million requirement. Subtracting the cash consumed since December 2010, it appeared the Memjet Group still required more than US\$581 million to break even. Even this may have been achievable, as the potential justified the investment.

In July 2011, the Memjet CEO projected total revenues for 2014 of \$1.5 billion, with a net profit of \$483 million.<sup>124</sup> Had this high growth rate and profitability been achieved, the PE ratio<sup>125</sup> would be at least 20, leading to a market capitalisation of over \$9.6 billion.

Unfortunately, the Memjet CEO's style did not fit well with most the Memjet Group's major customers, who were mostly from Japan, Taiwan, and Korea and China. Within 18 months, he had depleted the goodwill in the Asian relationships that the Memjet licensees and Silverbrook had spent a decade building up.<sup>126</sup>

As Silverbrook networked with the Asian customers, he was aware that the Memjet commercialisation was not going as the Memjet CEO had planned.<sup>127</sup> Silverbrook's concern was well founded - by the end of 2011, sales of the Memjet Group were only 8% of The Memjet CEO's sales predictions<sup>128</sup> - predictions made just six months earlier.

Silverbrook didn't think that the investors would be willing to continue to fund the Memjet Group when so much opportunity was being so rapidly destroyed. He recommended that the USGoC sell the entire Memjet opportunity to HP or another company with the resources and capabilities to commercialise the technology properly.<sup>129</sup>

In February 2012 MDB Capital, a US investment bank released a 125-page valuation report<sup>130</sup> valuing the Memjet technology at more than US\$3.5 billion<sup>131</sup> in an acquisition. This is substantially less than the Memjet CEO's implicit valuation of \$9.6 billion but took into account that the Memjet Group's own commercialisation path had been effectively destroyed by the CEO himself, and assumed that the technology would instead be commercialised by an acquirer.

## Hostile takeover

The USGoC had acquired effective control of the worldwide companies that licensed the Memjet technology for commercialisation, but the patents were owned by Silverbrook Research in Australia, and Silverbrook Research had the deep technical expertise required to perform most of the research and development.

To obtain full ownership of the Memjet patents and Silverbrook Research's capabilities and staff, the Memjet CEO had to oust Silverbrook. But Kia Silverbrook owned Silverbrook Research and saw this as his life's work, and the key to the Knowledge Industry. He was not prepared to let this go without a fight. To oust Silverbrook, the Memjet CEO had to smear him<sup>132</sup> to the USGoC, to Silverbrook's employees, to the Australian Government, and to the Australian public.<sup>133</sup>

Various techniques were used, including business interference, a smear campaign, extensive baseless lawsuits, Government influence, and an intensive secret scorched earth campaign, which destroyed at least eight Australian companies.<sup>134</sup>

The Memjet CEO made much ado that Silverbrook Research's R&D charges to the Memjet Group had increased substantially since 2009. Silverbrook made it abundantly clear to him that this was entirely due to the change in exchange rates, all SR's salaries being in Australian dollars. On 2 March 2009 the Australian dollar was worth US\$0.6326.<sup>135</sup> On 27 Jan 2012, the Australian dollar was worth US\$1.0615. This was an increase of 67.8% over three years. The Memjet CEO used this massive increase in the value of the Australian dollar to pretend that SR was "skimming profits from Memjet", a claim that the USGoC promulgated as part of their smear campaign.<sup>136</sup>

Kia Silverbrook was sued with well-funded and vastly complex lawsuits,<sup>137</sup> being spread over 19 time-zones, in five courts on four continents.<sup>138</sup> His family was stalked and staked out,<sup>139</sup> and death threats were issued to Silverbrook and his family.<sup>140</sup> A wheel fell off his wife's car as she was driving on the

highway, after the wheel nuts had been almost removed during the period that his family was being staked out.<sup>141</sup>

Various tricks were used by these seasoned raiders to avoid payment of tens of millions of dollars of Silverbrook Research and other invoices.<sup>142</sup> For example, using a protracted 'shell game' and other techniques, the USGoC avoided paying outstanding invoices of around \$8 million to Priority Matters.<sup>143</sup> These were never paid.

The USGoC filed a US\$610 million lawsuit against Silverbrook alleging fraud and planted a story<sup>144</sup> in the Sydney Morning Herald about it.<sup>145</sup> The fact that this lawsuit was settled by the USGoC paying Silverbrook US\$20 million is clear evidence that the lawsuit itself was an entirely fraudulent<sup>146</sup> attempt to apply pressure to Silverbrook.

Despite hiring top Australian law firms, Kia Silverbrook had no chance against the USGoC extremely well-funded and practised tactics, lawful or not. The USGoC had literally thousands of times Silverbrook's financial resources and extensive experience in using lawsuits to achieve commercial ends.

Even the US Government lost around \$880 million to the USGoC in the famous Solyndra scandal<sup>147</sup> of 2011.

Kia Silverbrook had created something that was too big to defend. He did not have the resources to defend against such a massive attack,<sup>148</sup> which was beyond anything that his Australian lawyers - the major law firms KWM, Gilbert+Tobin, and Truman Hoyle - had ever experienced. He was forced to settle for cents on the dollar, losing many millions of dollars,<sup>149</sup> including the reserve he kept for an orderly shutdown of the companies should it ever be required.<sup>150</sup>

In negotiations, Silverbrook was faced with two options:

1. preserve his own financial situation, and put 350 scientists and engineers out of work; or
2. take a massive financial loss, but preserve the well-paid jobs of 350 scientists and engineers, many of whom he had known more than ten years, and many of whom loved their jobs.

For Silverbrook, the choice was obvious.

350 scientists and engineers were transferred from Silverbrook Research to the Memjet Group in a forced settlement reached on 8 May 2012.<sup>151</sup>

The USGoC refused to pay more than US\$10 million for SR's assets, staff, and more than 7,000 patents. The attacks did not entirely destroy the Knowledge Industry Companies, but left them starved for cash, although still rich in patents and other intellectual property at the time.

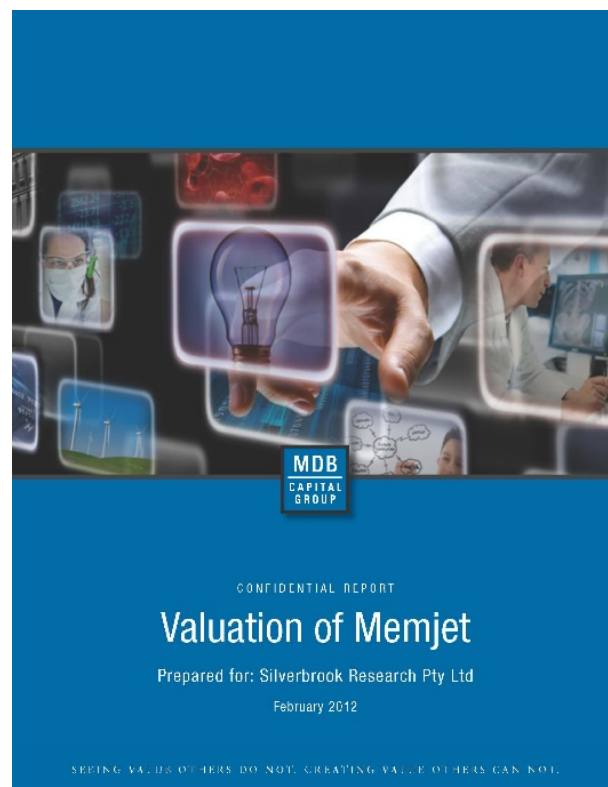
### Memjet shareholding

Kia Silverbrook held a 15.0186% shareholding<sup>152</sup> of the Memjet Group. Based on the MDB Capital valuation, the paper value of these shares was US\$537 million.<sup>153</sup>

However, the Memjet Group was privately held and controlled by the USGoC. The shares were not liquid, and the USGoC could block any private sale.

Even though he had standard minority shareholder protections against such machinations, he knew that he could not withstand the continued legal onslaught of the scale that he had just experienced.<sup>154</sup> Silverbrook managed to negotiate a further US\$10 million as a down-payment on the Memjet Group shareholding, pending its promised sale. However, he was never to see any more than this initial US\$10 million, as

Memjet was not sold as promised. Silverbrook transferred this \$10 million to the Knowledge Industry Companies to cover salaries and other liabilities.



### February 2012: MDB Capital Valuation - \$3.575 Bn

#### Ongoing attacks

After the initial wave of legal attacks in 2011 to early 2012, the Knowledge Industry Companies were caught in what appeared to be a *perfect storm*.<sup>155</sup> Silverbrook suspected that the perfect storm was actually orchestrated, and was really a *scorched earth*<sup>156</sup> campaign.<sup>157</sup> However, proof of this did not emerge until April 2014,<sup>158</sup> after the campaign had largely achieved its goals. The proof came in the discovery that the Lorretta Craig case, an unrelated and entirely fraudulent lawsuit, had been secretly funded by the USGoC to more than \$2 million.

This lawsuit had taken up much of Silverbrook's time and resources during 2013, the critical time period in the scorched earth campaign. After a two-week trial, the proceedings were dismissed in their entirety by Justice Sackar in the Supreme Court, with costs against Craig. Silverbrook's costs, also around \$2 million, were never recovered from Craig. The USGoC's willingness and ability to spend more than \$2 million on this unrelated side attack gives scale to their financial strength, and their unsavoury tactics used in their extensive attacks on Silverbrook.

The *scorched earth* campaign was extensive and thorough. Silverbrook engaged more than twelve lawyers to help deal with its many simultaneous attacks. As well as having to fight complex legal proceedings, contracts mysteriously fell through, a US\$36 million loan was not repaid,<sup>159</sup> and tax refunds of over \$4.5 million due from the ATO<sup>160</sup> were delayed by three and a half years.

## Silverbrook's attempt to reinvigorate the Knowledge Industry

After the Knowledge Industry had been crippled by the USGoC, Kia Silverbrook was trying to reconstruct it using its substantial remaining assets. There were initially many potential sources of income,<sup>161</sup> but the extensive scorched earth tactics employed by the USGoC progressively impaired many of these. As a result, four of the companies had no revenues, and the revenues of the fifth (Mpowa) were only a fraction of the salary bill.

With an expansion beyond its pilot program with Pacific Magazines,<sup>162</sup> Mpowa could readily have become profitable. The relatively modest capital required for expansion was to come from the repayment of a US\$36 million loan made to the Memjet Group. This loan had become due and payable on 31 December 2012.<sup>163</sup>

As Judge Street wrote:

*"I also accept the respondents' submission that the refusal of the [USGoC] to reimburse a US\$36 million loan to Silverbrook Research was a material contributing cause to the respondents' protracted temporary liquidity problem."*<sup>164</sup>

This was despite Silverbrook's extensive legal efforts to recover the loan.<sup>165</sup>



### August 2012: Silverbrook sold dozens of smartphone related patents to Google for US\$10 million

The USGoC scorched earth strategy meant that many other sources of funds<sup>166</sup> for the commercialisation of the Netpage technology were also blocked.

Silverbrook finally accepted just cents on the dollar on the Memjet Group loan so that he could pay lawyers, staff and suppliers of the Knowledge Industry Companies.<sup>167</sup> Silverbrook also relinquished his Memjet shareholding in 2014 to terminate any involvement with the USGoC.<sup>168</sup>

Of this half-billion-dollar paper loss, Silverbrook said:

*"I never thought of the money as being mine personally. I just lived off my salary. The share value was all allocated to the ten projects. The loss of the Memjet Group shareholding meant I could no longer do these ten projects that had really been my lifetime goal."*<sup>169</sup>

The final destruction of the Knowledge Industry Companies was achieved by an Australian Government department, the Fair Work Ombudsman (FWO). The FWO was induced into doing The USGoC's dirty-work by a lawyer in the employ of the USGoC.<sup>170</sup>

A restart of the Knowledge Industry Companies could have been funded by the sale of more than 2,000 patents<sup>171</sup> that the companies still owned. Unfortunately, there was no-one left at the companies to sell the patents except Silverbrook, and the constant pressure of the FWO's five simultaneous lawsuits required Silverbrook to focus all of his time on legal issues. He had no time to sell the patents (a process which typically takes more than 18 months), and the funds required to maintain them were absorbed in legal fees. Nearly all of the patents have since lapsed, and so are now worthless.<sup>172</sup>

## THE FWO'S LAWSUITS

The FWO's unreasonable<sup>173</sup> and improper<sup>174</sup> prosecution of Kia Silverbrook started in 2013. The FWO's investigation was heavily influenced by the USGoC smear campaign against him and ballooned from there. Judge Street said:

*"It is not necessary in this Court to determine whether that settlement was caused by duress or other misleading and deceptive conduct by the [USGoC]."*<sup>175</sup>

Or, of course, both.<sup>176</sup>

The Fair Work Ombudsman, Natalie James, stated:

*"You may know of us because of our litigation. It's true that we take some people to court. That's what grabs headlines."*<sup>177</sup>

In the midst of the chaos of the scorched earth campaign, the FWO started five separate lawsuits against Silverbrook personally for accessorial liability<sup>178</sup> over a single set of events described above. The lawsuits also were against the Knowledge Industry Companies and sought around \$3 million in penalties under the Fair Work Act 2009.

The FWO rejected many requests to reduce legal cost and effort by merging their five lawsuits into a single case, or by settling the matters. The filing of five similar cases required the separate preparation, reviewing and filing of at least 247 separate documents, and preparing for and attendance at 30 directions hearings before three separate judges.<sup>179</sup>

The five FWO lawsuits were run in a manner that deprived Silverbrook of the time needed to sell patents, and of the funds needed to maintain them. Silverbrook repeatedly explained this to the FWO but was ignored. Instead, the FWO made a concerted effort to remove Silverbrook's legal representative who understood patents, employment matters, and diminishing corporate valuations. As a result, all of these patents have now lapsed. The FWO has been the direct cause of the loss of at least \$28 million worth of assets, in just two of the five companies.<sup>180</sup>

Judge Street merged all five into a single case in December 2015, stating that the arrangement that the FWO insisted on:

*"does not advance the administration of justice."*<sup>181</sup>

The primary hearing was in March 2016.

## Silverbrook pays the salaries from his own resources

Kia Silverbrook had managed to fully pay out around 450<sup>182</sup> of the 500 employees, including by personally donating \$10 million from the sale of shares he held in his own inventions.<sup>183</sup> He had also sold or mortgaged his personal holdings, raising \$2.5 million to pay salaries. While this \$2.5 million loan to SR was secured against SR assets,<sup>184</sup> the liquidator negligently wasted \$20 million of SR assets,<sup>185</sup> so Silverbrook will never see the \$2.5 million loan repaid. The salaries owed were



corporate liabilities, and Silverbrook had no legal obligation to pay them.

Over time, he exhausted his personal funds in his endeavour to ensure that the entitlements of employees were paid.<sup>186</sup> The FWO struck while he was in the process of resolving the remaining 5% of the problems caused by the USGoC.

Ironically, the FWO's actions in 2013 prevented the remaining employees from being paid out until 2016, leading to the very contraventions that the FWO sued over in 2014.<sup>187</sup>

This was not the usual situation that the FWO investigates. The employees of the Knowledge Industry Companies were on salaries up to \$440,000 a year. Many were already millionaires from working there, some were multi-millionaires, and many others expected to become so. There was no worker exploitation, and no employees were low paid workers. Employees were enthusiastic about their jobs, and before the attacks from the USGoC, staff turnover was a remarkably low 2%. Employees stayed on of their own volition when payments were delayed, in the hope that Silverbrook could save their 'dream' jobs. The employees were not generating revenues,<sup>188</sup> and Silverbrook encouraged them to find other jobs if they could not afford to stay on.

The FWO normally deals with situations where the employees generate the revenue, and the directors reap the profits. The circumstances of the Knowledge Industry were reversed. The employees were generating no revenue. For each of the five Knowledge Industry Companies, Kia Silverbrook was paying the employees himself.

Judge Street found:

*"The corporate entities were in substance inventive knowledge venture vehicles that were not trading in daily goods or services and were substantially dependent upon the knowledge and funding by Mr Silverbrook."*<sup>189</sup>

Specifically, regarding each of the five Knowledge Industry Companies, Judge Street found:

- **Silverbrook Research:** "I accept that during the relevant time the sole source of funding for Silverbrook Research was Mr Silverbrook ..." <sup>190</sup>
- **Mpowa:** "I find that the respondents raised funding of \$1.5m by Mr Silverbrook transferring his shareholding interest in Mpowa and entered into agreements with the 24 former employees of Mpowa in August 2014 ..." <sup>191</sup>
- **Geneasys:** "The company had not commenced trading and was being funded by Mr Silverbrook in its prototype development. The Keylab technology had a potential significant humanitarian as well as commercial benefit." <sup>192</sup>
- **Priority Matters:** "I accept that the capital needs of Priority Matters were intended to be met by Mr Silverbrook..." <sup>193</sup>
- **Superlattice Solar:** "...at no stage did Superlattice have any income, and I accept that there was no return to the shareholders that occurred or was expected in the immediate future." <sup>194</sup>

Judge Street found that Kia Silverbrook believed that he was acting in the best interest of the employees by trying to save the Knowledge Industry Companies:

*"I find that the first respondent[Silverbrook] and second respondent reasonably believed that putting any of the corporate entities into liquidation would destroy the value of these corporate entities and would prevent the realisation of the corporate entities real value and would disadvantage the employees."*<sup>195</sup>

During the years that the FWO's lawsuits consumed all of Kia Silverbrook's time and resources, the unique wealth of intellectual property in the Knowledge Industry Companies was wasting away.

## THE FWO'S UNREASONABLE AND IMPROPER CONDUCT

In his scathing judgements<sup>196</sup> against the FWO, Judge Street described the FWO's conduct as "unreasonable" thirty-five times, "unfair" eight times, "inappropriate" seven times, and "improper" six times.<sup>197</sup>

Here are just a few of the comments that Judge Street made about the FWO's conduct:

*"...this is a case where the conduct of the regulator[FWO] fell well short of the standard expected of a regulator."*<sup>198</sup>

*"That strategy by the FWO was improper."*<sup>199</sup>

*"...the motion was utterly misconceived."*<sup>200</sup>

*"The Court conveyed that it was concerned in relation to the conduct of the applicant [FWO]."*<sup>201</sup>

*"The allegations advanced by the FWO in this application in a case were improper conduct by the FWO."*<sup>202</sup>

*"For the applicant not to bring to account the very substantial payments made by the respondents was unreasonable and unsatisfactory."*<sup>203</sup>

*"It is most unfortunate that the FWO engaged in what the Court concludes was a tactic to remove the representation of Mr Silverbrook in resolving employee complaints."*<sup>204</sup>

*"I find that the FWO has caused the other parties in each of the five matters to incur costs by its unreasonable conduct."*<sup>205</sup>

*"... was again utterly lacking in substance and was inappropriate conduct by the FWO."*<sup>206</sup>

## Egregious acts of the FWO

The following is a list of the more egregious acts of the FWO during the prosecution of their lawsuits against Kia Silverbrook. This is not a list of biased invective – many of the items below are directly quoted from a Federal Judge. In all cases, there is copious evidence linked to the endnotes. The FWO:

- effectively caused the contraventions that they sued Silverbrook over;<sup>207</sup>
- did not act in the best interests of the employees,<sup>208</sup> the protection of whom is their *raison d'être*;
- conspired to destroy a medical non-profit which was developing a radical new diagnostic technology;<sup>209</sup>
- misled the court over 1,000 times in the Silverbrook cases;<sup>210</sup>
- made outrageous and baseless allegations of criminal contempt against Silverbrook's lawyer;<sup>211</sup>
- lied under oath in court;<sup>212</sup>
- engaged in improper conduct;<sup>213</sup>
- wrote the affidavits of witnesses, deliberately omitting major payments made to those witnesses;<sup>214</sup>
- collaborated with a lawyer paid to conduct a business interference campaign against Silverbrook;<sup>215</sup>
- employed a tactic to thwart Silverbrook's lawyer who was resolving employee complaints;<sup>216</sup>
- used unfair processes in corresponding with Silverbrook;<sup>217</sup>

- conspired with extortionists to force a solvent medical research company into liquidation;<sup>218</sup>
- made an inappropriate strategic attempt to remove Silverbrook's legal representation;<sup>219</sup>
- falsely asserted that Silverbrook had admitted accessorial liability;<sup>220</sup>
- knowingly took advantage of Silverbrook's father dying of pancreatic cancer;<sup>221</sup>
- exploited Silverbrook's status as unrepresented litigant;<sup>222</sup>
- denied hundreds of well-known or otherwise well-evidenced truths;<sup>223</sup>
- failed to comply with court orders;<sup>224</sup>
- made false allegations in press releases;<sup>225</sup>
- refused to properly engage in settlement discussions;<sup>226</sup>
- did not act with procedural fairness;<sup>227</sup>
- failed to comply with the Government's statutory obligations as a Model Litigant;<sup>228</sup>
- also failed to comply with the Government's common-law obligations as a model litigant;<sup>229</sup>
- caused incalculable permanent damage to Australia's economic prospects;<sup>230</sup> and
- wasted millions of dollars of taxpayers' funds on unreasonable<sup>231</sup> litigation.<sup>232</sup>

In stark contrast to the FWO, Judge Street's opinion as to the honesty of Kia Silverbrook was:

*"I find that Mr Silverbrook was an honest, credible and impressive witness."*<sup>233</sup>

*"I find Mr Silverbrook to be a witness of truth."*<sup>234</sup>

*"Where Mr Silverbrook's evidence might be said to conflict with that of the other oral witnesses about the source and expectation of monies to pay entitlements, I prefer the evidence of Mr Silverbrook."*<sup>235</sup>

### FWO Inspector Jane Doe<sup>236</sup>

There is documentary proof that the USGoC spent more than \$2 million in improper secret payments to Australians to launch attacks against Silverbrook.<sup>237</sup> Unknown is how much more than \$2 million in secret payments was made, and to whom.

FWO Inspector Jane Doe was in extensive contact with a lawyer paid by the USGoC to disrupt Kia Silverbrook's business interests.<sup>238</sup> Inspector Doe relied on and repeated the statements of this lawyer, even over readily available contrary evidence from ASIC and from staff. The FWO was induced into doing the dirty work of an American billionaire, which the FWO did very effectively.

Silverbrook never spoke to, corresponded with, nor met Inspector Doe from the start of her investigations in 2013 until the court hearings in 2016.

Inspector Doe's affidavits<sup>239</sup> claimed that the FWO had received complaints from 74 staff of companies where Kia Silverbrook was a director. The Knowledge Industry Companies did not even have 74 employees at the time. Two-thirds of the complaints that the FWO referenced actually came from staff at Precision Mechatronics, a supplier to the Knowledge Industry Companies, where Silverbrook was neither a director, a manager, an officer, or a shareholder. The remaining one-third of the complaints were instigated either by a lawyer paid by the USGoC, or by Inspector Doe herself. Without such interference, the FWO would have received no complaints

from any company which Silverbrook controlled or was a director of.

The FWO persisted with this fiction for two years, despite being informed many times that it was incorrect. The FWO finally retracted the 74-complaint allegation on the day of the court hearing, thereby preventing cross-examination of the FWO on the issue and the subsequent embarrassment to the FWO of being caught swearing to a lie which formed a foundation of their case.

Inspector Doe "discovered" that Kia Silverbrook was founder and director of 27 companies in Australia. Most people would consider that to be an achievement. New companies are the life-blood of Australia's economic growth. Technology companies are even encouraged by some other Government departments.

Inspector Doe, however, made a great issue of her discovery. Of Inspector Doe's 234-page exhibit to her affidavit regarding Superlattice Solar, fully 152 pages<sup>240</sup> are given over to providing "proof" that Silverbrook was founder/director of 27 companies.<sup>241</sup> This "proof" was provided with the implication that starting these companies was somehow nefarious. Her other affidavits had similar "investigations" of the companies that Kia Silverbrook founded, with a total of more than 500 pages devoted to the issue.

Silverbrook countered Inspector Doe's naive claims with the following table:<sup>242</sup>

Metric	CSIRO <sup>243</sup>	Silverbrook Research
<b>Export revenues over 20 years</b>	>\$500 million	>\$800 million
<b>Companies founded</b>	150 in 30 years	About 40 in 20 years <sup>244</sup>
<b>Total granted patents</b>	3,900	9,714
<b>Granted US patents</b>	924	4,649
<b>Employees</b>	About 5,000	About 500
<b>Government funding</b>	Approx. \$750 million p.a.	NIL

Considering that the CSIRO had formed 150 companies to commercialise its 924 patents,<sup>245</sup> was it really so nefarious for Kia Silverbrook to have founded 41 companies<sup>246</sup> to commercialise his 4,649<sup>247</sup> patents?

When Inspector Doe casts aspersions on Silverbrook for founding 27 companies in Australia, she also casts these aspersions on the entire worldwide research and development community, where forming independent commercialisation companies for disparate technologies has long been normal practice. For example, 174 companies were formed to commercialise Thomas Edison's 1,084 inventions.<sup>248</sup>

Judge Street had further pointed criticisms of Doe's inexperience and mistakes:

*"The assertion of an inability to allocate entitlements by Inspector [Doe] was not correct."*<sup>249</sup>

*"Inspector [Doe] identified that she had never encountered research and development grants before."*<sup>250</sup>

*"I do not accept Inspector [Doe]'s evidence and explanation for the failure to contact the ATO in respect of the tax credits."*<sup>251</sup>

*"More importantly, there was no step taken in the present case by the applicant to even consider the MOU due to the lack of experience and flawed comprehension of the significance of the information by the inspector [Doe]."*<sup>252</sup>

### The attitude of Natalie James, the Ombudsman

Natalie James has stated:

*"Part of our role is to encourage productive workplaces. 'Best practice' or 'employer of choice' or a 'leader in your industry', whatever language you want to use to describe it, it results in more productive businesses. These are workplaces that attract and retain high performing staff that have lower turnover, higher attendance and higher employee engagement."*<sup>253</sup>

This statement is somewhat ironic, considering the Knowledge Industry Companies destroyed by her department were undeniable 'employers of choice' and 'leaders in their industry' worldwide, not just in Australia. The companies had an extraordinary low employee turnover of just 2% per annum before the scorched earth attacks and the interference of the FWO.

Unlike Silverbrook, Natalie James is positioned behind an opaque veil of lawyers and protected by legal privilege:

*"... I have advisers. Lawyers, who help me understand and manage my legal risk.....often this takes the form of them telling me not to tweet things."*<sup>254</sup>

It is telling that 45th President of the USA also has issues with lawyers telling him not to tweet.

In their attempts to obstruct and deny every aspect of Kia Silverbrook's defence, FWO lawyers even went to the extent of *disputing* that Natalie James was the Fair Work Ombudsman.<sup>255</sup>

### The FWO and Geneasys

Judge Street succinctly summed up what happened to Geneasys, and the FWO's role in its destruction:

*"Geneasys was about 9 months away<sup>256</sup> from a crucial working model stage when placed in liquidation by two employees at the encouragement of FWO so as to obtain Fair Entitlements Guarantee payments. The placement into liquidation of Geneasys adversely affected the tax credit of \$748,281.60 that was listed and shown as a tax credit from the research and development incentive claim that had been lodged on 2 July 2013. The liquidation also effectively destroyed the commercial value of the intellectual property of Geneasys."*<sup>257</sup>

Geneasys was solvent<sup>258</sup> but had a temporary cash flow problem<sup>259</sup> caused by the Australian Government. Geneasys had enough funds, \$748,281.60, sitting in its ATO tax refund account<sup>260</sup> to cover all staff entitlements and other liabilities many times over. Unfortunately, these were held up by an ATO investigation triggered by the USGoC's smear campaign, and the FWO investigation initiated by the USGoC. The ATO's investigation was not completed before Geneasys was forced into liquidation by an extortion attempt<sup>261</sup> organised by the lawyer funded by the USGoC and supported by FWO's Inspector Doe.

Geneasys was liquidated on 4 February 2014. The \$748,281.60 tax refund was lost, and with it \$4 million in scientific research, 355 US patents, and the potential to save millions of lives worldwide.

Judge Street wrote of the FWO's involvement in the destruction of Geneasys:

*"Indeed I find the employees' best interests were not advanced by conduct of the FWO which I find was a real cause of two employees causing the winding up of Geneasys so that they could recover Fair Entitlements Guarantee payments. That conduct was pursued by those employees I find with the encouragement of the FWO."*<sup>262</sup>

Understandably, Inspector Doe tried to deny her improper involvement in the forced liquidation of Geneasys. However, Judge Street found otherwise:

*"I also do not accept the evidence of Inspector Doe as correct in relation to whether there was encouragement of employees in relation to the winding up of Geneasys."*<sup>263</sup>

Despite being based in Melbourne, Inspector Doe was flown to Sydney by the FWO to attend the Geneasys wind-up hearing. On the same day, she also met with the lawyer purporting to represent the Geneasys employees, but actually paid by the USGoC.<sup>264</sup>

The Geneasys project had the potential to save many millions of lives,<sup>265</sup> and substantially reduce the cost of healthcare around the world. That this was thwarted by Government bureaucratic ignorance and self-interest is a tragedy beyond measure.

### The FWO tries to ensure that Kia Silverbrook is not legally represented

The FWO was well aware that Kia Silverbrook was financially strapped and could not afford legal representation,<sup>266</sup> having exhausted his personal funds by paying staff entitlements. On several occasions, the FWO took advantage of periods when he was unrepresented.<sup>267</sup> The FWO also strategically attacked his lawyers, so that they would not be able to act for him.

The FWO took out an Application in a Case, essentially a sub-lawsuit, against Silverbrook's long-standing employment lawyer, Fiona Inverarity, alleging criminal contempt of court. This was a very serious allegation against a lawyer. If proven, it could have caused the loss of her license to practise law.

Judge Street was not impressed by the FWO's attack on Fiona Inverarity and wrote:

*"The application in a case had no prospect of success and was an inappropriate strategic attempt by the FWO to remove Mr Silverbrook's legal representation by Ms Inverarity."*<sup>268</sup>

*"The proposition advanced in the letter by the FWO that the conduct of Ms Inverarity amounted to 'criminal contempt' was outrageous and baseless."*<sup>269</sup>

*"That improper strategy by the FWO worked."*<sup>270</sup>

As with the FWO's attack on Kia Silverbrook, a mere allegation can be highly damaging.

The FWO also attempted to take out his subsequent lawyer with another contempt-of-court action, but the Judge would not allow it.

### Lack of procedural fairness

Procedural fairness is supposedly a fundamental requirement of Australia's Government departments. Judge Street found that the FWO did not act with procedural fairness:

*"...the Court found there were steps taken by the applicant prior to the commencement of the proceedings were not in accordance with procedural fairness."*<sup>271</sup>

There had been delays in salary payments at the Knowledge Industry Companies, due to the scorched earth attacks. The



FWO misrepresented those delays as employees being deliberately underpaid,<sup>272</sup> ignoring that many were salaried millionaires,<sup>273</sup> and all employees were on salaries far higher than the Awards that the FWO polices.

## THE FWO CAUSED THE VERY BREACHES THAT THEY SUED OVER

Judge Street wrote:

*"I find that if the applicant [FWO] had contacted the ATO in relation to the potentially available funds being tax credits, those tax credits would have been paid within a matter of months and that the employees, the subject of these proceedings would not have had outstanding entitlements at the time the proceedings were commenced. Further, I find that if there had been no outstanding entitlements, that the applicant would have been unlikely to commence proceedings ...."*<sup>274</sup>

*"I find that Inspector [Doe] was provided information about the existence of tax credits that would have permitted payment of the outstanding employee entitlements."*<sup>275</sup>

*"The Court raised with Inspector [Doe] that it was concerned that there was obviously a very substantial amount outstanding to employees in respect of whom another Commonwealth body if payment was made, could have assisted in the paying of those employees. In response, Inspector [Doe] agreed and said "yes"."*<sup>276</sup>

One of the assets of Mpowa was a tax credit of \$3.8 million which sat unremitted in Mpowa's ATO account.<sup>277</sup> In the words of Judge Street:

*"Mpowa applied for a substantial research and development tax incentive in 2012 having incurred expenses of \$8,479,410. This resulted in a tax credit as at 22 May 2013 with the ATO in the sum of \$3,815,730.45."*<sup>278</sup>

This was a refund of 45% of research funds already raised and spent on eligible activities.

Over \$3.5 million in tax refunds from the ATO were credited to Mpowa's tax account in May 2013, after deductions of around \$300k in taxes.<sup>279</sup> This was more than all of the salary owed in all of the Knowledge Industry Companies put together. Normally, the ATO remits the funds within about 30 days, with a maximum of 60 days. In Mpowa's case, it was 3½ years.

The funds were held up by an intensive investigation by the ATO, started contemporaneously with the FWO's actions and with the USGoC smear campaign, and almost certainly caused by them. The ATO's investigation lasted for more than three years and only ended shortly after Judge Street found that Kia Silverbrook was vindicated.<sup>280</sup> It is clear that the ATO was waiting for the results of the FWO lawsuits before allowing the R&D refund.

The ATO stretched out the 'investigation' to three and a half years using the thinnest threads. The last months were consumed by the ATO invoking an international tax treaty to get the IRS to issue a summons<sup>281</sup> to Google's head office. The summons was for details of the patents Kia Silverbrook sold to Google for \$10 million in August 2012. This was despite the sale being from Silverbrook Research, not Mpowa, the company that the ATO was investigating, and despite that no patent-related expenses were claimed in the Mpowa R&D tax refund claim. Google confirmed that the transaction was exactly as Kia Silverbrook had represented.

This 3½-year delay was the death-blow for Mpowa. Mpowa and the Netpage technology project had been destroyed. All of the employees having long departed means that the technology is essentially impossible to resurrect. The around 1,000 US patents and 3,000 international patents owned by Mpowa have expired due to lack of funds to pay maintenance fees

It should come as no surprise that the ATO waited for the results of the FWO lawsuits – prudence dictated that they do so. However, it is a mechanism by which the FWO protracted unreasonable<sup>282</sup> and improper<sup>283</sup> lawsuits caused the very problems that the FWO is supposedly concerned with.

### Judge Street's opinion on the evidence

Of the unfortunate interaction between the FWO and the ATO, Judge Street wrote:

*"...the Court found that the applicant engaged in an unreasonable act or omission by failing to contact the ATO in relation to what was an obvious inquiry, in respect of the substantial amount that the applicant was aware was outstanding by the ATO."*<sup>284</sup>

In 2014, Kia Silverbrook managed to borrow \$1.6 million to pay entitlements for the ex-employees of Mpowa,<sup>285</sup> transferring his 5% equity in Mpowa as a 'sweetener'. As Judge Street wrote:

*"... the corporate entities were taking all steps that they could to try and ensure the payment on time of employees' entitlements. In the case of Mpowa Pty Limited, as indicated, an amount of \$1.6 million was in fact paid."*<sup>286</sup>

Despite the copious evidence, and the testimony of employees, the FWO denied that the \$1.6 million had been paid, and deliberately suppressed evidence of the payments in the employee's affidavits, which were written by the FWO's legal team. Regarding this deception, Judge Street wrote:

*"The Mpowa former employees each failed to properly disclose in their affidavit evidence payments made after commencement of the proceedings."*<sup>287</sup>

After a three-year investigation, the ATO eventually paid the refund claim. The ATO did not find a single error in the claim, which comprised many hundreds of line items. The refund went to finally pay ex-employees of the Knowledge Industry Companies. This three-year delay in entitlements could have been avoided had it not been for the interference of the FWO.

*"The Court made findings that the ATO would have paid the amount outstanding if the applicant [FWO] had made contact with the ATO and that it was unreasonable of the applicant not to do so. Subsequent to the judgment of this Court on 17 June 2016, the ATO has in fact made substantial payment to one of the corporate entities [Mpowa]."*<sup>288</sup>

However, by then the damage was done. Mpowa and the Netpage technology project had been destroyed.<sup>289</sup>

In September 2016, shortly after Judge Street declared Kia Silverbrook to be "vindicated",<sup>290</sup> the ATO finally remitted the tax refund claim. The tax refund allowed Mpowa to repay a previous loan and to re-borrow the funds to pay the employee claims. The employee claims were paid in November, as soon as the new loan was finalised.

### Judge Street's opinion of the FWO's role

Judge Street was scathing about the FWO's involvement:

*"No step was taken by the applicant [FWO] to prove the actual financial position and performance of any [Knowledge Industry Company] throughout the relevant period."*<sup>291</sup>

*"I find that if the applicant had contacted the ATO in relation to the potentially available funds being tax credits, those tax credits would have been paid within a matter of months and that the employees, the subject of these proceedings would not have had outstanding entitlements at the time the proceedings were commenced. Further, I find that if there had been no outstanding entitlements, that the applicant would have been unlikely to commence proceedings and that the costs that have been incurred by the respondents in defending these proceedings would not have been incurred."*<sup>292</sup>

Those costs have been over \$1,213,039 in direct legal costs,<sup>293</sup> but more importantly, the loss of patent portfolios worth tens of millions, and the loss of any chance of resurrecting a Knowledge Industry for Australia. The Knowledge Industry Companies had already brought in over \$800 million in export revenues during its initial phase. If the FWO had not prevented Kia Silverbrook from reviving it, the Knowledge Industry could eventually have been a significant part of Australia's export mix.

Judge Street wrote:

*"I find conduct of the FWO in the service of the notices to produce, the investigation and the commencement of proceedings by the FWO, publication of those proceedings and the encouragement by the FWO of proceedings by the employees to wind up the companies to obtain benefits under the Fair Entitlements Guarantee Act 2012 did impede both directors in the steps they were taking to try and obtain funds to pay out employee entitlements in circumstances of a continuing, but I find temporary liquidity crisis."*<sup>294</sup>

The Knowledge Industry Companies would have been able to preserve the valuable patents and pay out these ex-employees their full entitlements long before now, had the FWO not intervened. There would have been no impact on the public purse. The FWO has not had a "partial success" in the proceedings. On the contrary, it has caused substantial damage to all concerned in the Knowledge Industry Companies, as well as to the Australian taxpayer.

### **The FWO states that it "does not represent the employees."**

Most of the staff were opposed to FWO involvement, even though FWO gave lectures on fair work practices and employee rights at the workplace during a surprise visit in 2013. Kia Silverbrook informed the employees of the financial challenges and risks facing the companies and gave them the opportunity to determine their own ability to weather the storm.<sup>295</sup> Many had become salaried millionaires through their employment at the Knowledge Industry Companies.<sup>296</sup>

Those employees who co-operated with the FWO believed that the FWO was representing them, and was on their side, especially since FWO lawyers wrote their affidavits for them. However, during the proceedings, Verity McWilliam, Counsel for the FWO, made the FWO's position clear:

*"...and my client, the Fair Work Ombudsman, is the regulator. They are not representing each of the employees."*<sup>297</sup>

Any payment to employees would undermine the FWO's case. The FWO actively tried to hobble Silverbrook in his efforts to pay employees, as Judge Street noted:

*"It is most unfortunate that the FWO engaged in what the Court concludes was a tactic to remove the representation of Mr Silverbrook in resolving employee complaints."*<sup>298</sup>

If it hadn't been for the FWO's interference, all employees would have been fully paid by August 2013.

On several occasions from 2014 to 2016, Silverbrook warned the FWO that what they were doing would act dramatically and precisely against their stated objectives of protecting Australian workers. The FWO made it abundantly clear that they simply did not care.<sup>299</sup>

It is clear that the FWO valued a headline grab<sup>300</sup> more than employees of a technology company they did not understand.<sup>301</sup> For all of its efforts, the FWO achieved nothing for the employees – except a delay in their payments of more than three years.

Judge Street wrote:

*"I also accept the evidence of Mr Silverbrook ... that the steps taken by the FWO in commencing proceedings was not in the employees' best interests."*<sup>302</sup>

### **The FWO's goal in suing Silverbrook**

It is clear that the FWO's motivation was not to protect the employees of the Knowledge Industry Companies.

By ignoring the common root cause behind the delayed payments in all five companies, the FWO could apply for five times the penalties for the effort of a single prosecution program. It also meant that the FWO could litigate for penalties against Kia Silverbrook personally that were five times higher than they had ever achieved before.<sup>303</sup> For the FWO, this would be a real coup. As Natalie James said: "That's what grabs headlines."<sup>304</sup> Kia Silverbrook represented an opportunity for a bigger headline grab than a local restaurant owner or hairdresser.

Judge Street wrote:

*"In relation to the proceedings, it is apparent that the proceedings were brought in substance against the director or directors in respect of which the applicant was unsuccessful."*<sup>305</sup>

*"That partial success may not however reflect the overall substance of the proceedings which I find were the pursuit of the penalties against the directors. On that substantive issue the FWO has failed."*<sup>306</sup>

In his costs judgement against the FWO, Judge Street estimated that only 10% of costs were due to the FWO's pursuit of the companies, and 90% were due to the FWO's improper pursuit of Kia Silverbrook personally.<sup>307</sup>

Since Judge Street's judgment, the FWO has spent heavily to overturn his findings and discredit both Silverbrook and Judge Street.

## **THE DANGER TO ALL AUSTRALIANS**

### **Accessorial liability**

The FWO sued Silverbrook for Accessorial Liability under section 550 of the Fair Work Act 2009 which reads:

*"Involvement in contravention treated in same way as actual contravention*

*(1) A person who is involved in a contravention of a civil remedy provision is taken to have contravened that provision.*

- (2) A person is involved in a contravention of a civil remedy provision if, and only if, the person:
- (a) has aided, abetted, counselled or procured the contravention; or
  - (b) has induced the contravention, whether by threats or promises or otherwise; or
  - (c) has been in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the contravention; or
  - (d) has conspired with others to effect the contravention."

Natalie James, the Fair Work Ombudsman, stated:

"Section 550 is a standard, 'bread and butter' accessory liability provision. There are similar clauses throughout the statute books, including occupational health and safety law, as well as corporations, competition and consumer legislation."<sup>308</sup>

She is not wrong. Identical or similar language is used in some 98 Commonwealth Acts and hundreds of State enactments, including:

Example Act	Section
<b>Crimes Act 1914</b>	Sections 3AA, 15HE
<b>Corporations Act 2001</b>	7 Sections
<b>Competition and Consumer Act 2010</b>	15 Sections, Schedule 1
<b>Taxation Administration Act 1953</b>	Section 8Y, Schedule 1
<b>Proceeds of Crime Act 1987</b>	Section 7
<b>Telecommunications Act 1997</b>	16 Sections, Schedule 3A
<b>War Crimes Act 1945</b>	Section 6
<b>National Consumer Credit Protection Act 2009</b>	5 Sections
<b>Superannuation Guarantee (Administration) Act 1992</b>	Sections 72, 73
<b>Work Health and Safety Act 2011</b>	Section 256

## The FWO's interpretation

Unfortunately, the FWO has a unique way of interpreting these clauses. For the FWO, simply to be aware of a contravention is to become an accessory under Section 550. This applies even if you are the one person who was doing their utmost to prevent the contravention. As Natalie James said:

"We have been adventurously testing the limits of accessory liability provisions to ensure someone is held responsible for breaches of the Fair Work Act."<sup>309</sup>

The key phrase that enables the FWO's interpretation of Section 550 is "knowingly concerned". The term knowingly concerned is not defined in any act, and its meaning is therefore determined by legal precedent.

The FWO insists that to be knowingly concerned in a contravention is met if someone in a position of responsibility had any knowledge of that contravention. The FWO insists on this interpretation, even if the person went to great lengths to prevent the contravention (even to the extent of donating the last \$12.5 million of their own personal wealth to pay company salaries, despite having no personal liability, as did Silverbrook).

The FWO's interpretation is at odds with other jurisdictions (such as the 97 other Commonwealth Acts mentioned above) where to be knowingly concerned necessarily requires intent.

This means that to be liable, you must have known about the circumstances, and intended the outcome.

Consider the consequences if intent is not required in accessory liability. These consequences range from relatively minor to severe, depending on the Act. For example, Section 5D(6) of the Telecommunications (Interception and Access) Act 1979 is essentially the same as Section 550(2) of the Fair Work Act 2009, and reads:

"(6) An offence is also a serious offence if it is an offence constituted by:

- (a) aiding, abetting, counselling or procuring the commission of; or
- (b) being, by act or omission, in any way, directly or indirectly, **knowingly concerned** in, or party to, the commission of; or
- (c) conspiring to commit; an offence that is a serious offence under any of the preceding subsections."

The preceding subsections in this Act refer to such crimes as murder, kidnapping, terrorism, serious arson, child sex abuse, bribery, corruption, offences punishable by life imprisonment, and so on. Similar sections appear in the Crimes Act 1914, the War Crimes Act 1945, the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 and hundreds of other Commonwealth, State, and Territory Acts.

Using the FWO's interpretation, anyone who was aware of the commission of any of those offences is a serious offender... even if their awareness of the crime consisted only of seeing it reported on TV. Attempts to prevent the crime, reporting the crime to the police, being a hostage or a victim merely counts as proof that you were aware of the crime, and therefore knowingly concerned in it. If applied consistently to Australian law, the FWO's interpretation makes all Australians serious offenders, punishable by life imprisonment.

This is only one of 98 Commonwealth Acts and hundreds of State Acts which include the term knowingly concerned regarding accessory liability. In Australia, it would be virtually impossible to avoid accessory liability in a wide range of crimes and contraventions.

## Surely it is impossible for the FWO's interpretation to prevail?

It already has.

The FWO has been using this interpretation since its first prosecution for accessory liability. Intent is hard to prove, and it makes the FWO's job simple if all they have to prove is that the defendant knew about the contravention. This can simply be proven by a single email.

The FWO began suing company directors for accessory liability in around 2010 but then extended their lawsuits to general managers, payroll managers, HR managers, and others. They have since sued external accountants, lawyers, and payroll services,<sup>310</sup> even where the service provider has no control over their client's actions.

In the 2015/2016 financial year, the FWO sought orders against "accessories" in 92% of the cases filed in court.<sup>311</sup>

Silverbrook was the first to challenge the FWO's interpretation, and Judge Street came down firmly on his side. The FWO's iniquitous interpretation of knowingly concerned was overturned.

However, the FWO heavily funded an appeal at the Federal Court of Australia (FCA), heard by Justice Flick. The FWO



employed top silk Arthur Moses, who gave compelling oratory replete with an overwhelming number of falsehoods,<sup>312</sup> aimed at convincing Justice Flick that Silverbrook was a corporate cad and that his lawyer was unethical for defending him.

This oratory appears to have swayed Justice Flick into taking no notice of the evidence. It appears that Justice Flick did not read any of Silverbrook's affidavits or scan any of the exhibits.

Even Justice Flick himself admitted this:

*"ARGY [Silverbrook's lawyer]: The other aspect, your Honour, is – this is an extremely unusual case. Some of the incredulity that I sense your Honour has is because your Honour isn't fully imbued with the context, and – –"*

*HIS HONOUR: That's undoubtedly the case. I said at the outset that I wasn't as across this material as I should have been."*<sup>313</sup>

In a judgment which many lawyers have called bizarre, Justice Flick overturned all of Judge Streets judgements and ordered that the five cases be reheard in the FCCA under a different Judge.<sup>314</sup> This means that Silverbrook and the FWO have to repeat the entire process, at significant further expense.

Silverbrook applied for Special Leave to Appeal at the High Court of Australia,<sup>315</sup> but such leave is rarely granted. At the time, the HCA was famously dealing with constitutional issues around whether many Australian politicians with dual citizenship were eligible to serve in parliament. The HCA dismissed all 26 of the Special Leave applications up for consideration at the time.<sup>316</sup>

Justice Flick reversed Judge Street's decision and ruled that *intent* is not required to meet the condition *knowingly concerned*, and that a person is liable simply by knowing about the contravention. Further, if someone tries to prevent the contravention, that counts as irrefutable evidence that they knew of the contravention, and establishes a prima facie case of accessory liability.

As the meaning of knowingly concerned has not been previously challenged, Justice Flick's judgement has now become the prevailing precedent, that any Australian lawyer can reference when litigating under any of the hundreds of Acts that include the term.

As it currently stands, knowingly concerned does not require intent. Any Australia is an accessory to any crime or contravention just by knowing about it.

### Is the threat real?

Of course, it may be argued a witness to terrorism who risks their life to prevent the terrorist act would not, in practice, be convicted as an accessory to murder. But they now can be *charged* as an accessory, and that is the problem.

Due to Justice Flick's precedent, a court may become obliged to find such a person guilty, no matter how ridiculous the Judge finds that interpretation. A judge must abide by precedents set by higher courts.

Justice Flick's judgement allows any person with a grudge against another (or paid to have such a grudge) to launch a lawsuit against that person as an accessory under any of 98 Commonwealth statutes, irrespective of what that person has actually done. Lawsuits could easily be constructed so that the person will necessarily be found guilty or liable as an accessory in lower courts. The judgement would enliven prosecutions of Australians as accessories to criminal or civil contraventions based simply on proving knowledge of the ingredients of the

primary offence, even if those Australians were trying to prevent the contraventions or crimes from occurring.

## THE FWO'S RESPONSE

The FWO has made a variety of responses to the material here, mostly along the following lines:

### The FWO is just enforcing the law

As explained [above](#), the FWO is actually enforcing its unique and dangerous interpretation of the law.

### It's under appeal

Silverbrook's cases have travelled from the Federal Circuit Court (FCCA) through the Federal Court of Australia, to an appeal to the High Court (unheard, as it was in the middle of the parliamentary citizenship issues, and no appeals were heard at the time), and have now returned to the FCCA for a rehearing.

The points of law remain controversial. The matters of fact upon which Judge Street commented remain the same.

The FWO's appeal essentially amounts to their assertion that the law permits them to behave as appallingly as they did.<sup>317</sup>

Loopholes afforded by sections 55ZG(2) and 55ZG(3) of the Judiciary Act 1903 allowed the FWO to keep this matter in the courts for nearly five years, at multi-million dollar taxpayer expense, even years after all staff had been fully paid all amounts the FWO claimed. Moreover, absent the FWO's intervention, all amounts owing to staff would have been paid in August 2013, before the FWO filed any lawsuits.

During the five-year process, FWO had misled the court more than 1,000 times,<sup>318</sup> and has not yet corrected the vast majority of these misstatements.

### The FWO responded by smearing Silverbrook

A bill (Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017<sup>319</sup>) was before parliament that vastly increased the powers of the FWO. Silverbrook made a submission to the parliamentary committee considering this bill, warning the committee of the FWO's abuses<sup>320</sup> of the powers that it already had. The FWO countered with a deceptive attack:

*"By way of background, the Fair Work Ombudsman filed legal proceedings in 2013 and 2014 in relation to the non-payment of wages and entitlements to 43 employees by five companies that employed the workers. The proceedings also alleged involvement of Mr Silverbrook ... as accessories by virtue of the operation of section 550 of the Fair Work Act. In June 2016, the Federal Circuit Court found that Priority Matters Pty Ltd, Superlattice Solar Pty Ltd, Geneasys Pty Ltd, Silverbrook Research Pty Ltd and Mpowa Pty Ltd contravened workplace laws. The Court ordered more than \$1.15 million in back-payments (plus interest), and imposed \$115,000 in penalties."*<sup>321</sup>

The FWO did not inform the Commission that the contraventions of workplace laws were due almost entirely to the FWO's own actions.<sup>322</sup> All employees at the Knowledge Industry Companies were very well paid. About \$1.15 million in salaries were delayed by more than 3 years due to the FWO's actions, and these were the \$1.15 million in back-payments that the court ordered. Without the FWO's interference, any contraventions caused by the USGoC attacks would have been resolved by August 2013, well before the FWO filed lawsuits in late 2013 and 2014. Silverbrook

explained this to the FWO on many occasions, but the FWO was blinded by the lure of its biggest headline grab<sup>323</sup> to date.

### The FWO's obligations as a Model Litigant are not enforceable

FWO lawyers take pride in behaviour (see list [above](#)) which would embarrass even the most unscrupulous commercial lawyers. The Legal Services Directions 2017 is a set of binding rules issued by the Attorney-General about the performance of Commonwealth legal work. They include various requirements for any Commonwealth department to act as a Model Litigant.

Judge Street said:

*"It is not appropriate for the FWO to depart from the Model Litigant standards that apply to the Commonwealth."*<sup>324</sup>

The FWO's response when Silverbrook brought up the FWO's obligations as a Model Litigant was:

*"(a) compliance with a Legal Services Direction is not enforceable except by, or upon the application of, the Attorney-General: section 55ZG(2) of the Judiciary Act 1903 (Cth) (Judiciary Act); and*

*(b) non-compliance with a Legal Services Direction may not be raised in any proceeding (whether in a court, tribunal or other body) except by, or on behalf of, the Commonwealth: s 55ZG(3) of the Judiciary Act."*<sup>325</sup>

In this the FWO is correct. Even though being a Model Litigant is Government policy<sup>326</sup> and also the FWO's own litigation policy,<sup>327</sup> the FWO's obligations as a Model Litigant are not enforceable and cannot be raised in court, except by the Commonwealth Government itself. Relying upon these paragraphs in a Commonwealth Act dating back to 1903,<sup>328</sup> the FWO's behaviour is totally unchecked, and the above quote from the FWO<sup>329</sup> shows that they are aware of this loophole, and are deliberately exploiting it to avoid accountability.

## ECONOMIC IMPACTS OF THE FWO

While the destruction caused by the USGoC put a major dent in Silverbrook's Knowledge Industry plan, it did not put the plan beyond the point of resuscitation. There were still enough patents left to fund a multi-million-dollar reinvigoration, and Silverbrook knew precisely the best inventors and engineers to rehire in a renewed effort.

Silverbrook saw the USGoC's hostile takeover as only a five-year setback in his long-term plans. A five-year setback was unfortunate, but not fatal to plans that were essentially multi-generational.

The FWO's actions have put reinvigoration of the Knowledge Industry beyond the limits of possibility. It took Silverbrook twenty years to build it the first time, and he does not have another twenty years left to rebuild it from scratch.<sup>330</sup>

The FWO's damage to the Knowledge Industry includes the loss of patent rights during the period of the FWO's lawsuits. The number of patents that have been lost or impaired due to the activities of the FWO exceeds the total number of patents filed by *all Australians in an entire year*.<sup>331</sup>

The FWO has been the destructor of a significant national economic prospect, despite being warned on many occasions that their course of action would cause precisely that. Silverbrook had proven that the Knowledge Industry could provide a billion-dollar benefit to the Australian economy, and that was only the beginning.

This result is particularly ironic when the Australian government has promoted a National Innovation and Science Agenda,<sup>332</sup> with the tagline *"Welcome to the Ideas Boom."* The Agenda includes initiatives worth \$1.1 billion over four years.<sup>333</sup> In today's dollars, the \$800 million of export earnings brought in by the Knowledge Industry since 1995 would exceed this \$1.1 billion. Had the companies not been destroyed, they could easily have met the goals of the "ideas boom" by themselves, considering that from 2006 to 2011 they were responsible for as many patented inventions as the rest of Australia combined. The FWO's misguided actions have generated an "ideas bust" of national proportions.

*"I think it is fair to say that such a capability will never be seen in Australia again. It took the singular capabilities of the most prolific inventor in world history, combined with a philanthropic view of corporate activities and a commitment to science to create the Knowledge Industry Companies. The likelihood of such a person ever again being an Australian is minuscule."*<sup>334</sup>

### Years of extreme stress finally wins

Natalie James said:

*"Naming and shaming is very much a part of this exercise, and it is one that, in many ways, has the most impact."*<sup>335</sup>

Many people have had the unpleasant experience of fighting a legal battle against a Government department. However, it is quite another thing to personally endure five simultaneous multi-year battles involving 30 Government-paid lawyers<sup>336</sup> ignoring their obligations as a Model Litigant,<sup>337</sup> and intent on burying their mistakes. Silverbrook had to do much of the background legal work himself, as his finances had been completely depleted. Legal costs had to be minimised, yet still amounted to well over 1 million dollars. Due to a bizarre ruling at the FCA, the entire FWO lawsuits now must be reheard from scratch.

In this case, the impact of the FWO's unreasonable<sup>338</sup> and improper<sup>339</sup> actions was the destruction of an Australian industry, and the loss of the capability to save millions of lives worldwide. Certainly, the harm that the FWO has done in this one case far outweighs the good that the FWO is ever likely to do.

The stress finally got the better of Silverbrook, who suffered a massive heart attack on 16 April 2016,<sup>340</sup> resulting in debilitating permanent heart damage,<sup>341</sup> which further limits his ability to revive the Knowledge Industry.

## NOTES AND LINKS TO REFERENCES

If you are reading this on paper, or in a format not supporting links, the documents linked to here can be found at <http://bit.ly/KnowledgeIndustry>

<sup>1</sup> [Timeline of major events](#)

<sup>2</sup> Page 5 of [A wide-ranging interview with Kia Silverbrook](#)

<sup>3</sup> Many of these inventions were made in 1996-2004 – it typically takes several years for patent applications to be assessed and granted by the US Patent Office (USPTO). Since 2011, Silverbrook's time has been consumed by legal issues, and he has not had time to invent.

<sup>4</sup> Page 2 of [Kia Silverbrook inventions](#) also at page 7 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)

<sup>5</sup> World-scale being more than 10,000 scientists and engineers

<sup>6</sup> Page 5 of [A wide-ranging interview with Kia Silverbrook](#)

<sup>7</sup> Page 12 of [A wide-ranging interview with Kia Silverbrook](#)

<sup>8</sup> Paragraph 31 of [First Affidavit of Kia Silverbrook](#)

<sup>9</sup> Page 12 of [A wide-ranging interview with Kia Silverbrook](#)

<sup>10</sup> Page 580, Fast MBA, by Can Akdeniz, 2014, excerpted at pages 218-225 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)

<sup>11</sup> Not the real name of the companies involved. Actual names withheld.

<sup>12</sup> Pages 15-16 of [Kia Silverbrook inventions](#) also at pages 20-21 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)

<sup>13</sup> [MEMS](#): Microelectromechanical Systems – tiny mechanical structures, on the scale of microns.

<sup>14</sup> Pages 33-40 of [Lyra report on Memjet](#) also at pages 528-535 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)

<sup>15</sup> Video at page 9 of [Kia Silverbrook inventions](#) also at page 14 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)

<sup>16</sup> Page 35 of [Lyra report on Memjet](#) also at page 530 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)

<sup>17</sup> Pages 18-32 of [Kia Silverbrook inventions](#) also at pages 23-37 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)

<sup>18</sup> Page 12 of [Kia Silverbrook inventions](#) also at page 17 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)

<sup>19</sup> In Netpage pen: pages 9-10 of [Kia Silverbrook inventions](#) also at pages 14-15 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)

<sup>20</sup> Page 33 of [Kia Silverbrook inventions](#) also at page 38 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)

<sup>21</sup> Page 14 of [Kia Silverbrook inventions](#) also at page 19 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)

<sup>22</sup> Pages 10-11 of [Kia Silverbrook inventions](#) also at pages 15-16 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)

<sup>23</sup> Some [Handwriting Recognition](#) US patents granted to Silverbrook Research

<sup>24</sup> Page 2 of SMH article: [Genius or scoundrel - patently, someone is wrong](#) also at page 207 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)

<sup>25</sup> The underlying technology of these [Handwriting Recognition](#) US patents granted to Silverbrook Research is also used for glyph recognition

<sup>26</sup> Pages 9-10 of [Kia Silverbrook inventions](#) also at pages 14-15 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)

<sup>27</sup> [Edison Awards Gold Medal - Memjet](#) also at pages 229-230 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)

<sup>28</sup> For example, pages 4-6, 12, 32, 34-35, 36, 42, 42 of [Kia Silverbrook inventions](#), also in [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)

<sup>29</sup> Wikipedia of [List of Prolific Inventors](#)

<sup>30</sup> United States Patent and Trademark Office (USPTO) of [Kia Silverbrook's granted US patents](#)

<sup>31</sup> Page 2 of [Kia Silverbrook inventions](#) also at page 6 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)

<sup>32</sup> Wikipedia of [List of Prolific Inventors](#). Thomas Edison had a total of 1,093 US patents. 1,084 were patents for inventions, and 9 were for designs.

<sup>33</sup> Page 3 of [Kia Silverbrook inventions](#) also at page 8 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)

<sup>34</sup> Wikipedia of [List of prolific inventors](#)

<sup>35</sup> Page 9-11, 12, 13, 14-15, 22-37, 38, 40-41, 42, 43-47, 48, 49, 50 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)

<sup>36</sup> Page 576, Fast MBA, by Can Akdeniz, 2014, excerpted at pages 218-225 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)

<sup>37</sup> Paragraph 479 of [First Affidavit of Kia Silverbrook](#)

<sup>38</sup> This was the 1960's, so predates the internet, personal computers, video games, video players, iPods, smart phones and tablets, as well as electronics in ovens, washing machines, cars, and other devices.

However, TVs, telephones, and record players were nearly ubiquitous in Australian homes at the time.

<sup>39</sup> Paragraph 479 of [First Affidavit of Kia Silverbrook](#).

<sup>40</sup> Paragraph 478 of [First Affidavit of Kia Silverbrook](#).

<sup>41</sup> As described in page 2 of [A wide-ranging interview with Kia Silverbrook](#)

<sup>42</sup> Pages 3-4 of [A wide-ranging interview with Kia Silverbrook](#)

<sup>43</sup> Page 55 of [Kia Silverbrook inventions](#) also at page 59 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)

<sup>44</sup> [CMI](#): Fairlight CMI (Computer Musical Instrument)

<sup>45</sup> Page 54 of [Kia Silverbrook inventions](#) also at page 58 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)

<sup>46</sup> Pages 52-53 of [Kia Silverbrook inventions](#) also at page 56-57 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)

<sup>47</sup> Arrays of Inmos [Transputers](#)

<sup>48</sup> [Black Tuesday](#): The October 1987 stock market crash (Black Monday in the US)

<sup>49</sup> [CISRA](#): Canon Information Systems Research Australia

<sup>50</sup> E.g. Pages 47-51 of [Kia Silverbrook inventions](#) also at pages 51-55 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#) and [Silverbrook US patents assigned to Canon](#)

<sup>51</sup> Which could, at that time, be filed for \$40 each.

<sup>52</sup> Paragraph 14 of [First Affidavit of Kia Silverbrook](#)

<sup>53</sup> Wikipedia of [List of prolific inventors \(sorted by country\)](#) downloaded 16 Feb 2017

<sup>54</sup> Paragraph 31 of [JL Affidavit 16 Aug 2016](#)

<sup>55</sup> Paragraphs 39-43 of [JL Affidavit 16 Aug 2016](#)

<sup>56</sup> Paragraph 32 of [First Affidavit of Kia Silverbrook](#)

<sup>57</sup> Paragraph 31 of [First Affidavit of Kia Silverbrook](#)

<sup>58</sup> [Silverbrook Research Introduction](#) also at pages 232-270 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)

<sup>59</sup> Paragraph 38 of [JL Affidavit 16 Aug 2016](#)

<sup>60</sup> Page 2 of [A wide-ranging interview with Kia Silverbrook](#)

<sup>61</sup> [List of Granted patents initially assigned to Silverbrook Research](#) also at pages 281-429 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)

<sup>62</sup> Paragraph 43 of [JL Affidavit 16 Aug 2016](#)

<sup>63</sup> An overview of the Memjet story appears at paragraphs 117-339 of [First Affidavit of Kia Silverbrook](#)

<sup>64</sup> Paragraph 135-136 of [First Affidavit of Kia Silverbrook](#)

<sup>65</sup> Paragraph 137-138 of [First Affidavit of Kia Silverbrook](#)

<sup>66</sup> Pages 20-31, 26, 28-29 of [Kia Silverbrook inventions](#) also at page Pages 25-26, 31, 33-34 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)

<sup>67</sup> [Lyra report on Memjet](#) also at pages 489-605 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)

<sup>68</sup> Page 109 of [Lyra report on Memjet](#) also at page 604 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)

<sup>69</sup> Page 108 of [Lyra report on Memjet](#) also at page 603 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)

<sup>70</sup> Page 3 of [A wide-ranging interview with Kia Silverbrook](#)

<sup>71</sup> Paragraph 128-131 of [First Affidavit of Kia Silverbrook](#)

<sup>72</sup> Paragraph 129 of [First Affidavit of Kia Silverbrook](#)

<sup>73</sup> Paragraphs 351-376 of [First Affidavit of Kia Silverbrook](#)

<sup>74</sup> Page 107 of [Memjet Valuation - MDB Capital Feb 2012](#) also at page 168 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)

<sup>75</sup> The NPV is lower than one might expect for a \$30 billion a year opportunity, as MDB capital's DCF analysis included product development, manufacturing, and marketing expenses of \$5 billion over the first five



years after acquisition. This was a realistic assumption if the acquirer was HP, Samsung, or some other substantial company.

- <sup>76</sup> [Lyra report \(2007\)](#) [Tatung-GE-Memjet business plan \(2008\): internal projections \(2011\)](#) [excerpt from customer \(LG\) financial model \(2011\)](#) [MDB Capital valuation \(2012\)](#) also at pages 489-605 (Lyra), pages 1410-1444 (Tatung-GE), pages 1657-1660 (internal), pages 1450-1471 (LG) and pages 62-186 (MDB) of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)
- <sup>77</sup> See [Lyra report \(2007\)](#) also at pages 489-605 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)
- <sup>78</sup> [Disruptive technology](#): an innovation that creates a new market and value network and eventually disrupts an existing market and value network.
- <sup>79</sup> Page 579, Fast MBA, by Can Akdeniz, 2014, excerpted at pages 218-225 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)
- <sup>80</sup> [Netpage Intro 14 April 2012](#) also at pages 692-726 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)
- <sup>81</sup> [Netpage Pen introduction - 28 November 2012](#) also at pages 728-758 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)
- <sup>82</sup> [Roll, pitch, and yaw](#) of the pen in relation to the paper. This is useful as another control input, and to make hand-written signatures unforgeable.
- <sup>83</sup> [Mixed Reality](#): a combination of Virtual Reality (VR) and Augmented Reality (AR) with the best features of both.
- <sup>84</sup> [Netpage Viewer Features](#) also at pages 760-792 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)
- <sup>85</sup> A description of Mpowa appears at paragraphs 83-99 of [First Affidavit of Kia Silverbrook](#)
- <sup>86</sup> Paragraphs 66-72 of [Second Affidavit of Kia Silverbrook](#)
- <sup>87</sup> Paragraphs 181-182, 319-324, 119, 78, 111, 274, 349, 422-423, and 488 of [First Affidavit of Kia Silverbrook](#), and [Letter to Vandini Limited - Loan facility - Gilbert and Tobin - 21 Dec 2012](#) also at pages 1650-1652 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)
- <sup>88</sup> Paragraph 181-182, 319-324 of [First Affidavit of Kia Silverbrook](#)
- <sup>89</sup> [Sources of funds](#) also at pages 188-189 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)
- <sup>90</sup> Paragraph 286 of [Judge Street - Reasons for Primary Judgement](#)
- <sup>91</sup> A description of Geneasys appears at paragraphs 55-82 of [First Affidavit of Kia Silverbrook](#)
- <sup>92</sup> Pages 12-19 of [A wide-ranging interview with Kia Silverbrook](#)
- <sup>93</sup> [Geneasys Overview June 2013](#) also at page 625 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)
- <sup>94</sup> Paragraph 56 of [First Affidavit of Kia Silverbrook](#)
- <sup>95</sup> Pages 5-7 of [Kia Silverbrook inventions](#) also at pages 9-11 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)
- <sup>96</sup> Paragraph 58 of [First Affidavit of Kia Silverbrook](#)
- <sup>97</sup> Paragraph 59 of [First Affidavit of Kia Silverbrook](#)
- <sup>98</sup> Pages 15-16 and 19 of [A wide-ranging interview with Kia Silverbrook](#)
- <sup>99</sup> [Geneasys Patent Highlights - 17 May 2013](#)
- <sup>100</sup> Ranked 3<sup>rd</sup> worldwide in Lab-on-a-chip category in [ClearViewIP - Home Health Diagnostics Microfluidics & IP](#) ahead of Samsung, Caltech, Philips and others. Ranked first worldwide in Healthcare and Medicine category for 2011 in [McDermott Will and Emery article on Nanotechnology](#)
- <sup>101</sup> Paragraph 95 of [Judge Street - Reasons for Primary Judgement](#)
- <sup>102</sup> Paragraphs 207-217 of [Second Affidavit of Kia Silverbrook](#)
- <sup>103</sup> Paragraph 286 of [Judge Street - Reasons for Primary Judgement](#)
- <sup>104</sup> A description of Superlattice Solar appears at paragraphs 100-112 of [First Affidavit of Kia Silverbrook](#)
- <sup>105</sup> Page 13 of [Kia Silverbrook inventions](#) also at page 17 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)
- <sup>106</sup> A lay presentation of the economics of Superlattice Solar is at pages 69-75 of [The Essence of Disruptive Technologies talk by KS in Singapore](#), also at pages 935-941 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)
- <sup>107</sup> [BOS](#): Balance of System - inverters, equipment and facilities, grid connections, office facilities, etc.
- <sup>108</sup> [GigaWatt](#): billion Watt (million kWh per hour), the approximate capacity of large hydroelectric or coal-fired power stations.
- <sup>109</sup> A description of Priority Matters appears at paragraphs 340-350 of [First Affidavit of Kia Silverbrook](#)
- <sup>110</sup> [Patent prosecution](#) is the process of writing and filing a patent application and pursuing protection for the patent application with the patent office.
- <sup>111</sup> Page 4 of [A wide-ranging interview with Kia Silverbrook](#)
- <sup>112</sup> Paragraph 476 of [First Affidavit of Kia Silverbrook](#), Page 6 of [A wide-ranging interview with Kia Silverbrook](#)

- <sup>113</sup> Paragraph 477 of [First Affidavit of Kia Silverbrook](#)
- <sup>114</sup> Page 4 of [A wide-ranging interview with Kia Silverbrook](#)
- <sup>115</sup> [Geneasys update October 2013](#)
- <sup>116</sup> [Superlattice Solar technical document](#)
- <sup>117</sup> Wikipedia: [Space elevator](#)
- <sup>118</sup> Page 12 of [A wide-ranging interview with Kia Silverbrook](#)
- <sup>119</sup> Not the real names of the companies involved. Actual names withheld.
- <sup>120</sup> Paragraphs 154, 157 of [First Affidavit of Kia Silverbrook](#) and page 3 of [A wide-ranging interview with Kia Silverbrook](#)
- <sup>121</sup> Paragraphs 147, 154-159 of [First Affidavit of Kia Silverbrook](#)
- <sup>122</sup> Paragraph 156 of [First Affidavit of Kia Silverbrook](#)
- <sup>123</sup> Paragraphs 205-215 of [First Affidavit of Kia Silverbrook](#).
- <sup>124</sup> Page 1 of [Memjet July 2011 Financial Sensitivity Model Consolidated v 1.0](#) also at page 1657 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)
- <sup>125</sup> [PE Ratio](#): Price to Earnings Ratio
- <sup>126</sup> Paragraphs 183-194 of [First Affidavit of Kia Silverbrook](#).
- <sup>127</sup> Paragraphs 183-200 of [First Affidavit of Kia Silverbrook](#)
- <sup>128</sup> Paragraph 183 of [First Affidavit of Kia Silverbrook](#)
- <sup>129</sup> [Memjet options - Document as presented to the Memjet board July 2011](#) also at pages 1473-1502 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)
- <sup>130</sup> [MDB Capital valuation \(2012\)](#), also at pages 62-186 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)
- <sup>131</sup> US\$3.575 billion, an average of four different valuation methods. Paragraph 271 of [First Affidavit of Kia Silverbrook](#)
- <sup>132</sup> Page 7 of [A wide-ranging interview with Kia Silverbrook](#)
- <sup>133</sup> Paragraphs 283-287 of [First Affidavit of Kia Silverbrook](#)
- <sup>134</sup> Silverbrook Research Pty Ltd, Mpowa Pty Ltd, Geneasys Pty Ltd, Superlattice Solar Pty Ltd, Priority Matters Pty Ltd, Molecular Electronics Research Pty Ltd, Precision Mechatronics Pty Ltd, and Rapid Packaging Services Pty Ltd.
- <sup>135</sup> Reserve Bank of Australia historical data
- <sup>136</sup> Page 2 of [Genius or scoundrel - patently, someone is wrong – SMH - 16 April 2012](#)
- <sup>137</sup> A lead lawyer on the USGoC' side comments on the complexity of the case in [Q&A with Cooley's Tony Steigler](#) after the question "What is the most challenging case you have worked on and why?" Steigler's report is highly coloured. Of course, it does not admit liability for the fraudulent lawsuits that they funded. For example, "Ancillary shareholder proceedings were filed against respondents by third-party investors in Sydney" is Steigler's way of referring to a fraudulent lawsuit that the USGoC secretly funded to a commitment around US\$3 million, with at least US\$2 million actually paid. This baseless lawsuit was brought by Lorretta Craig, who had never been an investor. After a two-week trial, the proceedings were dismissed in their entirety by Justice Sackar in the Supreme Court, with costs against Craig. Kia Silverbrook's costs of around \$2 million, were never recovered from Craig, as the litigation funding had been carried out in secret by the USGoC, and was not discovered until about six months later. Details of this fraud can be found in paragraphs 377-420 of [First Affidavit of Kia Silverbrook](#).
- <sup>138</sup> Paragraph 242-249, 275-282 of [First Affidavit of Kia Silverbrook](#)
- <sup>139</sup> Paragraph 262 of [First Affidavit of Kia Silverbrook](#)
- <sup>140</sup> Paragraph 263 of [First Affidavit of Kia Silverbrook](#)
- <sup>141</sup> Paragraph 264 of [First Affidavit of Kia Silverbrook](#)
- <sup>142</sup> Paragraph 252-254, 265-268, 272-274 of [First Affidavit of Kia Silverbrook](#)
- <sup>143</sup> Paragraph 347 of [First Affidavit of Kia Silverbrook](#)
- <sup>144</sup> [Genius or scoundrel - patently someone is wrong – SMH - 16 April 2012](#)
- <sup>145</sup> Paragraphs 283-287 of [First Affidavit of Kia Silverbrook](#)
- <sup>146</sup> Paragraphs 275-282 of [First Affidavit of Kia Silverbrook](#)
- <sup>147</sup> The Solyndra scandal was US Front page news in September 2011. For an overview of the scandal, see: [The Solyndra Memorial Tax Break - Wall Street Journal](#). For its effect on Silverbrook, see paragraphs 360-367 of [First Affidavit of Kia Silverbrook](#)
- <sup>148</sup> A lead lawyer from the major US law firm Cooley comments on the complexity of the case in [Q&A with Cooley's Tony Steigler](#) after the question "What is the most challenging case you have worked on and why?"
- <sup>149</sup> Paragraph 274 of [First Affidavit of Kia Silverbrook](#)
- <sup>150</sup> Paragraph 81, 288, 329 of [First Affidavit of Kia Silverbrook](#)
- <sup>151</sup> Paragraphs 47-48, 290-299 of [First Affidavit of Kia Silverbrook](#)

<sup>152</sup> In conjunction with his wife, paragraph 315 of [First Affidavit of Kia Silverbrook](#)

<sup>153</sup> Paragraph 119 of [First Affidavit of Kia Silverbrook](#) & page 6 of [A wide-ranging interview with Kia Silverbrook](#)

<sup>154</sup> At least 12 law firms, four continents, 19 time zones. For an idea of the scale of the legal onslaught, see the comments on the complexity of the case by Tony Steigler, a senior Cooley's lawyer engaged by the USGoC, in [Q&A with Cooley's Tony Steigler](#). These comments are in response to the question "What is the most challenging case you have worked on and why?"

<sup>155</sup> Page 18 of [A wide-ranging interview with Kia Silverbrook](#)

<sup>156</sup> [Scorched earth campaign](#): A military strategy (in this case, used commercially) that targets anything that might be useful to the enemy. Specifically, all of the assets that are used or can be used by the enemy are targeted, such as food sources, transportation, communications, industrial resources, and even the people in the area.

<sup>157</sup> Paragraph 203, 81, 98, 329, 433, 454, 460 of [First Affidavit of Kia Silverbrook](#)

<sup>158</sup> This was the discovery that the Lorretta Craig case, an unrelated fraudulent lawsuit, had been secretly funded by the USGoC to more than \$2 million. After a two-week trial, the proceedings were dismissed in their entirety by Justice Sackar in the Supreme Court, with costs against Craig. Kia Silverbrook's costs, also around \$2 million, were never recovered from Craig, as the litigation funding had been carried out in secret by the USGoC, and was not discovered until about six months later. Details of this fraud can be found in paragraphs 377-420 of [First Affidavit of Kia Silverbrook](#).

<sup>159</sup> Paragraph 182, 319-324, 328-329 of [First Affidavit of Kia Silverbrook](#)

<sup>160</sup> \$3,815,730.45 in Mpowa and \$748,281.60 in Geneasys, at paragraphs 429 and 79 respectively of [First Affidavit of Kia Silverbrook](#)

<sup>161</sup> [Sources of funds](#) also at pages 188-189 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)

<sup>162</sup> Paragraphs 66-72 of [Second Affidavit of Kia Silverbrook](#)

<sup>163</sup> Paragraphs 181-182, 319-324, 119, 78, 111, 274, 349, 422-423, and 488 of [First Affidavit of Kia Silverbrook](#) and [Letter to Vandini Limited - Loan facility - Gilbert and Tobin - 21 Dec 2012](#) also at pages 1650-1652 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)

<sup>164</sup> Paragraph 136 of [Judge Street - Reasons for Primary Judgement](#)

<sup>165</sup> Paragraph 181-182, 319-324 of [First Affidavit of Kia Silverbrook](#)

<sup>166</sup> [Sources of funds](#) also at pages 188-189 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)

<sup>167</sup> Paragraph 455-457, 477 of [First Affidavit of Kia Silverbrook](#)

<sup>168</sup> Although the shares represented 15.0186% of the Memjet Group, Silverbrook reasoned that the shares were really only worth the amount that would have to be paid to dodgy lawyers to restructure the companies so as to make Silverbrook's shareholding worthless. Silverbrook had standard minority shareholder protections built into the agreements, but these only work if you can afford the legal costs to defend them. There is no protection against an adversary who is willing and able to deploy unlimited legal and quasi-legal resources, and to engage *scorched earth* tactics.

<sup>169</sup> Page 6 of [A wide-ranging interview with Kia Silverbrook](#)

<sup>170</sup> Paragraphs 202, 447, 506, 385, 417, 134-138, 140, 143-149, 208-214, 221, 439, 469-470, 492, 498-502, 505, 517, 526-529 of [Second Affidavit of Kia Silverbrook](#) & paragraphs 88-89 of [Costs Submissions in Reply](#), 23 September 2016, & [Court Transcripts Judge Street 7-18 March 2016](#): T135.22, T146.19-30, T166.30-T172.14, T201.14-16, T235.19-T238.18, T258.32-T262.10, T329.8-45, T492.24-T493.34, T532.5-15, T558.2-6, T730.44-T731.7

<sup>171</sup> A subset of the 9,714 patents listed at pages 282-429 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)

<sup>172</sup> E.g. [SR Patent Inventory valuation](#) and [Priority Matters Patent Inventory Valuation](#)

<sup>173</sup> In the opinion of Judge Street, at paragraphs 121, 122, 123, 161, 172, 292, 293, 294 of [Judge Street - Reasons for Primary Judgement](#)

<sup>174</sup> In the opinion of Judge Street, at paragraphs 287, 288, 291 of [Judge Street - Reasons for Primary Judgement](#)

<sup>175</sup> Paragraph 140 of [Judge Street - Reasons for Primary Judgement](#)

<sup>176</sup> Anyone interested can make their own assessment. The facts are laid out at paragraphs 117 to 420 of the [First Affidavit of Kia Silverbrook](#) and the associated exhibits.

<sup>177</sup> Paragraph 4 of a Speech by Natalie James for the National Small Business Summit on 8 August 2014 entitled "[FWO's Deal with Small Business](#)"

<sup>178</sup> Section 550 of the [Fair Work Act 2009](#)

<sup>179</sup> 14 separate directions hearings before Judge Emmett in relation to SYG3209/2013, SYG3228/2013 and SYG3210/2013; 10 directions hearings before Judge Nicholls in relation to SYG1743/2014, and 6 directions hearings before Judge Manousaridis in relation to SYG1780/2014.

<sup>180</sup> \$8 million: [Priority Matters Patent Inventory Valuation](#) \$20 million: [SR Patent Inventory valuation](#)

<sup>181</sup> Paragraphs 10-15 of Judge Street's: [Reasons for judgement - Withdrawal of admissions](#) 4 December 2015

<sup>182</sup> Paragraph 472 of [First Affidavit of Kia Silverbrook](#)

<sup>183</sup> Paragraph 477 of [First Affidavit of Kia Silverbrook](#)

<sup>184</sup> [General security agreement - SR - KS, JL 12 April 2012 - Execution version](#), [General Security Agreement SR - KS, JL 12 April 2012 - signature page](#), Proof of debt form with liquidator of SR: [\\$2.5 million Proof of debt form 29 April 2014](#)

<sup>185</sup> \$20 million wasted by WSPS (SR) liquidator: [SR Patent Inventory valuation](#)

<sup>186</sup> Paragraph 132 of [Judge Street - Reasons for Primary Judgement](#)

<sup>187</sup> Paragraphs 170-174 of [Judge Street - Reasons for Primary Judgement](#)

<sup>188</sup> With the exception of Mpowa, which generated enough revenues to cover around 20% of salaries.

<sup>189</sup> Paragraph 36 of [Judge Street's Reasons for Costs and Penalty Judgement](#)

<sup>190</sup> Paragraph 97 of [Judge Street - Reasons for Primary Judgement](#)

<sup>191</sup> Paragraph 120 of [Judge Street - Reasons for Primary Judgement](#)

<sup>192</sup> Paragraph 15 of [Judge Street - Reasons for Primary Judgement](#)

<sup>193</sup> Paragraph 99 of [Judge Street - Reasons for Primary Judgement](#)

<sup>194</sup> Paragraph 93 of [Judge Street - Reasons for Primary Judgement](#)

<sup>195</sup> Paragraph 253 of [Judge Street - Reasons for Primary Judgement](#)

<sup>196</sup> Judge Street's: [Reasons for Primary Judgement](#) [Reasons for Judgement - Recusal](#), and [Reasons for Costs and Penalty Judgement](#)

<sup>197</sup> In Judge Street's: [Reasons for Primary Judgement](#), and [Reasons for Costs and Penalty Judgement](#)

<sup>198</sup> Paragraph 60 of [Judge Street's Reasons for Costs and Penalty Judgement](#)

<sup>199</sup> Paragraph 291 of [Judge Street - Reasons for Primary Judgement](#)

<sup>200</sup> Paragraph 28 of [Judge Street's Reasons for Judgement - Recusal](#)

<sup>201</sup> Paragraph 31 of [Judge Street's Reasons for Judgement - Recusal](#)

<sup>202</sup> Paragraph 288 of [Judge Street - Reasons for Primary Judgement](#)

<sup>203</sup> Paragraph 121 of [Judge Street - Reasons for Primary Judgement](#)

<sup>204</sup> Paragraph 288 of [Judge Street - Reasons for Primary Judgement](#)

<sup>205</sup> Paragraph 293 of [Judge Street - Reasons for Primary Judgement](#)

<sup>206</sup> Paragraph 287 of [Judge Street - Reasons for Primary Judgement](#)

<sup>207</sup> Paragraphs 170-174 of [Judge Street - Reasons for Primary Judgement](#)

<sup>208</sup> Paragraphs 168, 286 of [Judge Street - Reasons for Primary Judgement](#)

<sup>209</sup> Paragraphs 15-16 of [Judge Street - Reasons for Primary Judgement](#)

<sup>210</sup> [Times that the FWO misled the court](#). This 255-page document currently lists 1,077 misleading statements or actions of the FWO in the five Silverbrook matters

<sup>211</sup> Paragraph 285 of [Judge Street - Reasons for Primary Judgement](#)

<sup>212</sup> Paragraphs 48-59 of [Appeal Submissions - Contention](#), 24 January 2017

<sup>213</sup> Paragraph 288 of [Judge Street - Reasons for Primary Judgement](#)

<sup>214</sup> Paragraphs 120-123, 192 of [Judge Street - Reasons for Primary Judgement](#) & Paragraphs 73-76 of [Appeal Submissions - Contention](#), 24 January 2017

<sup>215</sup> Paragraphs 202, 447, 506, 385, 417, 134-138, 140, 143-149, 208-214, 221, 439, 469-470, 492, 498-502, 505, 517, 526-529 of [Second Affidavit of Kia Silverbrook](#) & paragraphs 88-89 of [Costs Submissions in Reply](#), 23 September 2016, & [Court Transcripts Judge Street, 7-18 March 2016](#): T135.22, T146.19-30, T166.30-T172.14, T201.14-16, T235.19-T238.18, T258.32-T262.10, T329.8-45, T492.24-T493.34, T532.5-15, T558.2-6, T730.44-T731.7

<sup>216</sup> Paragraphs 170, 283-293 of [Judge Street - Reasons for Primary Judgement](#)

<sup>217</sup> Paragraphs 164-167 of [Judge Street - Reasons for Primary Judgement](#)

<sup>218</sup> Paragraphs 168, 286 of [Judge Street - Reasons for Primary Judgement](#)

<sup>219</sup> Paragraph 288 of [Judge Street - Reasons for Primary Judgement](#)

<sup>220</sup> Paragraph 15 of [FCCA Judge Street Judgement - Withdrawal of admissions - 9 December 2015](#)

<sup>221</sup> Paragraphs 24.s. of [JL Affidavit 16 Aug 2016](#)

<sup>222</sup> Paragraphs 66-72 of [Appeal Submissions - Contention](#), 24 January 2017 & Paragraphs 491-492, 498 of [First Affidavit of Kia Silverbrook](#)

<sup>223</sup> For example, several hundred paragraphs in [Times that the FWO misled the court](#)

<sup>224</sup> Paragraphs 60-65 of [Appeal Submissions - Contention](#) 24 January 2017 & Paragraph 4 of Judge Street's: [Reasons for judgement - Withdrawal of admissions](#)

<sup>225</sup> Press releases from the Fair Work Ombudsman: [Businessman, companies face court for allegedly underpaying staff \\$870,000](#) and [Businessman faces further legal action for allegedly underpaying staff \\$1.8 million](#)

<sup>226</sup> Paragraphs 165-166 of [Judge Street - Reasons for Primary Judgement](#)

<sup>227</sup> Paragraphs 115-116 of [Judge Street - Reasons for Primary Judgement](#)

<sup>228</sup> Paragraphs 169, 284, 290, 293 of [Judge Street - Reasons for Primary Judgement](#)

<sup>229</sup> Paragraphs 79-85 of [Appeal Submissions - Contention](#) 24 January 2017

<sup>230</sup> See [Kia Silverbrook inventions](#) and page 16 of [A wide-ranging interview with Kia Silverbrook](#), and paragraphs 25-50 of [JL Affidavit 16 Aug 2016](#)

<sup>231</sup> In the opinion of Judge Street, at paragraphs 121, 122, 123, 161, 172, 292, 293, 294 of [Judge Street - Reasons for Primary Judgement](#)

<sup>232</sup> Actual amounts that the FWO has spent are unknown, but certainly would greatly exceed \$1 million. Kia Silverbrook's costs were over \$1.2 million, even though he did much of the work himself. Judge Street said: "...legal costs have been incurred in an amount of \$1,213,039.05." in paragraph 68 of [Judge Street's Reasons for Costs and Penalty Judgement](#). As the FWO engaged upwards of 30 internal and external lawyers and other staff, and wrote the affidavits of 11 witnesses, the FWO's expenditure was probably much higher than Silverbrook's. By the end of the re-hearings, the FWO's total costs are likely to exceed \$2 million, including FWO employees, Ashurst Lawyers, Arthur Moses SC, Verity McWilliam, and other expenses.

<sup>233</sup> Paragraph 126 of [Judge Street - Reasons for Primary Judgement](#)

<sup>234</sup> Paragraph 128 of [Judge Street - Reasons for Primary Judgement](#)

<sup>235</sup> Paragraph 129 of [Judge Street - Reasons for Primary Judgement](#)

<sup>236</sup> Not the real name of the FW Inspector. Actual name withheld.

<sup>237</sup> The Lorretta Craig case, an unrelated fraudulent lawsuit, was secretly funded by the USGoC to more than \$2 million. The secret agreement between the USGoC and Lorretta Craig is at [GKFF Agreement secretly funding Lorretta Craig Case](#).

<sup>238</sup> Paragraphs 202, 447, 506, 385, 417, 134-138, 140, 143-149, 208-214, 221, 439, 469-470, 492, 498-502, 505, 517, 526-529 of [Second Affidavit of Kia Silverbrook](#) & paragraphs 88-89 of [Costs Submissions in Reply](#), 23 September 2016, & [Court Transcripts, Judge Street, 7-18 March 2016](#): T135.22, T146.19-30, T166.30-T172.14, T201.14-16, T235.19-T238.18, T258.32-T262.10, T329.8-45, T492.24-T493.34, T532.5-15, T558.2-6, T730.44-T731.7

<sup>239</sup> All five affidavits from Inspector Ashley Hurrell include reference to 74 complaints. For example: Paragraph 13 of [Affidavit of Inspector Ashley Hurrell - Superlattice solar - 24.7.2015](#), Paragraph 14 of [Affidavit of Inspector Ashley Hurrell - Priority Matters - 24.7.2015](#)

<sup>240</sup> Pages 82-234 of [Exhibit AKH-1 to Inspector Ashley Hurrell's affidavit regarding Superlattice Solar](#)

<sup>241</sup> Inspector Ashley Hurrell only included Australian companies. Kia Silverbrook is also founder of a further 14 international companies, for a total of 41.

<sup>242</sup> Paragraph 43 of [First Affidavit of Kia Silverbrook](#)

<sup>243</sup> [CSIRO](#): Commonwealth Scientific and Industrial Research Organisation, Australia's largest Government funded research organisation.

<sup>244</sup> "About 40 in 20 years" is how the number of companies founded by Kia Silverbrook appears in his affidavit. He subsequently determined that the actual number of companies was 41.

<sup>245</sup> US patent numbers are used – the total patent numbers include patents duplicated in other countries, and so overestimate the number of inventions. Many companies use total patents to 'plump up' their numbers.

<sup>246</sup> [List of companies and purposes](#) also at page 194-195 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)

<sup>247</sup> 4,740 US patents for inventions at the time of writing of [US Patents of Kia Silverbrook](#)

<sup>248</sup> [List of Edison companies](#)

<sup>249</sup> Paragraph 122 of [Judge Street - Reasons for Primary Judgement](#)

<sup>250</sup> Paragraph 35 of [Judge Street's Reasons for Judgement - Recusal](#)

<sup>251</sup> Paragraph 112 of [Judge Street - Reasons for Primary Judgement](#)

<sup>252</sup> Paragraph 159 of [Judge Street - Reasons for Primary Judgement](#)

<sup>253</sup> Page 5 of [Natalie James Speech to Australia Israel chamber of commerce](#)

<sup>254</sup> Page 1 of [Natalie James speech to AHRI](#) 27 July 2016

<sup>255</sup> Paragraph 7 of [Times that the FWO misled the court](#). This 255-page document currently lists 1,077 misleading statements or actions of the FWO in the five Silverbrook matters

<sup>256</sup> Page 6 of [Geneasys Status Update - 31 Jan 2013](#), also at page 32 of [Exhibit KS-2 to Second Affidavit of Kia Silverbrook](#)

<sup>257</sup> Paragraph 16 of [Judge Street - Reasons for Primary Judgement](#)

<sup>258</sup> [Forensis - Geneasys accountant expert report](#), also at pages 101-120 of [Exhibit KS-2 to Second Affidavit of Kia Silverbrook](#)

<sup>259</sup> Page 8 of [A wide-ranging interview with Kia Silverbrook](#)

<sup>260</sup> [Geneasys Tax agent portal - 25 July 2013](#)

<sup>261</sup> Paragraphs 207-217 of [Second Affidavit of Kia Silverbrook](#)

<sup>262</sup> Paragraph 286 of [Judge Street - Reasons for Primary Judgement](#)

<sup>263</sup> Paragraph 112 of [Judge Street - Reasons for Primary Judgement](#)

<sup>264</sup> Paragraphs 202, 447, 506, 385, 417, 134-138, 140, 143-149, 208-214, 221, 439, 469-470, 492, 498-502, 505, 517, 526-529 of [Second Affidavit of Kia Silverbrook](#) and T135.22, T146.19-30, T166.30-T172.14, T201.14-16, T235.19-T238.18, T258.32-T262.10, T329.8-45, T492.24-T493.34, T532.5-15, T558.2-6, T730.44-T731.7 of [Court Transcripts Judge Street 7-18 March 2016](#)

<sup>265</sup> Pages 16-17 of [A wide-ranging interview with Kia Silverbrook](#)

<sup>266</sup> Page 5 of [A wide-ranging interview with Kia Silverbrook](#)

<sup>267</sup> Paragraphs 491-492, 498 of [First Affidavit of Kia Silverbrook](#)

<sup>268</sup> Paragraph 288 of [Judge Street - Reasons for Primary Judgement](#)

<sup>269</sup> Paragraph 285 of [Judge Street - Reasons for Primary Judgement](#)

<sup>270</sup> Paragraph 288 of [Judge Street - Reasons for Primary Judgement](#)

<sup>271</sup> Paragraph 42 of [Judge Street's Reasons for Costs and Penalty Judgement](#)

<sup>272</sup> All Knowledge Industry Companies staff were on wages that ranged from good to excellent, with many staff members surpassing \$200,000 a year, and some over \$400,000 (2009 figures). Many were salaried millionaires. Contrary to the FWO's allegations, the staff were not underpaid. The problem was delayed payment, which came about due to the hostile takeover by the USGoC, and the massively delayed payment of tax refunds by the ATO. These caused temporary extreme cash flow difficulties, which were dramatically exacerbated by the actions of the FWO itself.

<sup>273</sup> Someone who has made more than \$1 million total salary from working at the Knowledge Industry Companies.

<sup>274</sup> Paragraph 174 of [Judge Street - Reasons for Primary Judgement](#)

<sup>275</sup> Paragraph 161 of [Judge Street - Reasons for Primary Judgement](#)

<sup>276</sup> Paragraph 38 of [Judge Street's Reasons for Judgement - Recusal](#)

<sup>277</sup> A copy of the ATO tax portal: [Mpowa ATO Business Portal - 23 December 2015](#), also at page 2106 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#). This shows the \$3,815,730.45 credit at 22 May 2013 that was not received until September 2016 due to the actions of the FWO.

<sup>278</sup> Paragraph 23 of [Judge Street - Reasons for Primary Judgement](#)

<sup>279</sup> Page 2106 of [Exhibit KS-1 to First Affidavit of Kia Silverbrook](#)

<sup>280</sup> Paragraph 303 of [Judge Street - Reasons for Primary Judgement](#)

<sup>281</sup> [IRS Summons to Google at ATO's request](#)

<sup>282</sup> In the opinion of Judge Street, at paragraphs 121, 122, 123, 161, 172, 292, 293, 294 of [Judge Street - Reasons for Primary Judgement](#)

<sup>283</sup> In the opinion of Judge Street, at paragraphs 287, 288, 291 of [Judge Street - Reasons for Primary Judgement](#)

<sup>284</sup> Paragraph 57 of [Judge Street's Reasons for Costs and Penalty Judgement](#)

<sup>285</sup> Paragraph 224(d) of [Affidavit in Reply of JL 23 September 2016](#)

<sup>286</sup> Paragraph 39 of [Judge Street's Reasons for Costs and Penalty Judgement](#)

<sup>287</sup> Paragraph 85 of [Judge Street - Reasons for Primary Judgement](#)

<sup>288</sup> Paragraph 24 of [Judge Street's Reasons for Costs and Penalty Judgement](#)

<sup>289</sup> The employees having long departed means that the technology is almost impossible to resurrect.

<sup>290</sup> Paragraph 303 of [Judge Street - Reasons for Primary Judgement](#)

<sup>291</sup> Paragraph 186 of [Judge Street - Reasons for Primary Judgement](#)

<sup>292</sup> Paragraph 174 of [Judge Street - Reasons for Primary Judgement](#)

<sup>293</sup> "...legal costs have been incurred in an amount of \$1,213,039.05." paragraph 68 of [Judge Street's Reasons for Costs and Penalty Judgement](#)

<sup>294</sup> Paragraph 170 of [Judge Street - Reasons for Primary Judgement](#)

<sup>295</sup> Paragraphs 96 of [Second Affidavit of Kia Silverbrook](#)

<sup>296</sup> Paragraph 17 of [JL Affidavit 16 Aug 2016](#)

<sup>297</sup> Line 20, page 99 of [Court Transcript, Day 1, 7 March 2016](#)



298 Paragraph 288 of [Judge Street - Reasons for Primary Judgement](#)  
299 Paragraph 104 of [Priority Matters Patent Inventory Valuation](#)  
300 “that’s what grabs headlines” from paragraph 4 of a Speech by Natalie  
James for the National Small Business Summit on 8 August 2014 entitled  
“[FWO’s Deal with Small Business](#)”  
301 “Inspector Hurrell identified that she had never encountered research and  
development grants before.” from paragraph 35 of [Judge Street’s](#)  
[Reasons for Judgement - Recusal](#)  
302 Paragraph 168 of [Judge Street - Reasons for Primary Judgement](#)  
303 Page 8 of [A wide-ranging interview with Kia Silverbrook](#)  
304 Paragraph 4 of a Speech by Natalie James for the National Small Business  
Summit on 8 August 2014 entitled “[FWO’s Deal with Small Business](#)”  
305 Paragraph 42 of [Judge Street’s Reasons for Costs and Penalty Judgement](#)  
306 Paragraph 295 of [Judge Street - Reasons for Primary Judgement](#)  
307 Paragraph 85 of [Judge Street’s Reasons for Costs and Penalty Judgement](#)  
308 Page 3 of [Natalie James speech to AHRI](#) 27 July 2016  
309 Page 4 of [Natalie James speech to AHRI](#) 27 July 2016  
310 E.g. [2016: The year of accessorial liability](#) and [Accountants and advisors at](#)  
[risk of accessorial liability](#)  
311 [Hook, line and sinker: Accessorial liability under the Fair Work regime](#)  
312 [Court Transcript - Appeal - 20170314 - Day 1 pages 1 – 70, Court Transcript](#)  
[- Appeal - 20170315 - Day 2 pages 71 – 181, Court Transcript - Appeal -](#)  
[20170316 - Day 3 pages 182 - 241.](#) <sup>312</sup> Some of the tomes that the FWO  
led Arthur Moses SC to mislead Justice Flick are included in [Times that the](#)  
[FWO misled the court.](#)  
313 T61.26-T61.31 of [Court Transcript - Appeal - 20170314 - Day 1 pages 1 – 70](#)  
314 [FCA Justice Flick Judgement - Appeal - 25 July 2017](#)  
315 [Application for Special Leave to Appeal at the High Court of Australia S215](#)  
[of 2017, FWO response, Silverbrook reply](#)  
316 [HCA Special Leave Dismissal notices - 16 November 2017](#)  
317 [Notice of Appeal - FWO v Priority Matters and Silverbrook.](#) This is one of  
five Notices of Appeal that are identical except defendant names  
318 [Times that the FWO misled the court.](#) This 255-page document currently  
lists 1,077 misleading statements or actions of the FWO in the five  
Silverbrook matters  
319 [Fair Work Amendment \(Protecting Vulnerable Workers\) Bill 2017](#)  
320 Submission: [Fair Work Amendment \(Protecting Vulnerable Workers\) Bill](#)  
[2017 - Submission 037 \(cover letter\)](#) which included the attachment: [Fair](#)

[Work Amendment \(Protecting Vulnerable Workers\) Bill 2017 - Submission](#)  
[037 \(knowledge industry\).](#)

321 This quote is from: [Fair Work Amendment \(Protecting Vulnerable Workers\)](#)  
[Bill 2017 - Submission 037 ROR reply from Natalie James](#)  
322 Paragraph 23 of [Judge Street - Reasons for Primary Judgement](#)  
323 “that’s what grabs headlines” from paragraph 4 of a Speech by Natalie  
James for the National Small Business Summit on 8 August 2014 entitled  
“[FWO’s Deal with Small Business](#)”  
324 Paragraph 290 of [Judge Street - Reasons for Primary Judgement.](#)  
325 Paragraph 15 of [Mediation Summary Statement from FWO - 25 May 2015](#)  
326 The relevant Model Litigant rules at the time were contained in [Legal](#)  
[Services Directions 2005](#)  
327 [FWO Litigation Policy GN1 \(Guidance Note 1\)](#)  
328 Page 46, paragraphs 55ZG(2) and 55ZG(3) [Judiciary Act 1903](#)  
329 Paragraph 15 of [Mediation Summary Statement from FWO - 25 May 2015](#)  
330 Page 8 of [A wide-ranging interview with Kia Silverbrook](#)  
331 More than 2,000 patents of the Knowledge Industry Companies have been  
lost. Australia was granted 1,948 US patents for inventions in 2016,  
according to [USPTO Records.](#)  
332 [National Innovation and Science Agenda](#)  
333 Most of which are just rebadged existing programs  
334 Paragraph 50 of [JL Affidavit 16 Aug 2016](#)  
335 [Up close and personal - HRM online,](#) 1 November 2016  
336 And inspectors: [FWO Staff and external lawyers engaged on the Five](#)  
[Matters](#)  
337 The FWO has obligations as a model litigant in common law, even though  
they refuse to abide by their statutory obligations as a Model Litigant,  
stating that the obligations are unenforceable.  
338 In the opinion of Judge Street, at paragraphs 121, 122, 123, 161, 172, 292,  
293, 294 of [Judge Street - Reasons for Primary Judgement](#)  
339 In the opinion of Judge Street, at paragraphs 287, 288, 291 of [Judge Street -](#)  
[Reasons for Primary Judgement](#)  
340 Paragraphs 129-139 of [JL Affidavit 16 Aug 2016](#)  
341 STEMI, 5 stents, 100% LAD blockage, 75% RCA blockage, LVEF=30%,  
pulmonary oedema, 13 days hospitalisation, as detailed in [Westmead](#)  
[Cardiology Discharge - 27 April 2016](#)